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Presidential Documents

Title 3—

The President

Proclamation 6459 of July 20, 1992

Lyme Disease Awareness Week, 1992

By the President of the United States of America

A Proclamation

At a time when millions of Americans are taking advantage of warm summer weather to enjoy hiking, gardening in the backyard, and other outdoor activities, it is fitting that we remind ourselves of the health threat posed by Lyme disease. Discovered in 1975 by a rheumatologist who noted a high incidence of arthritis among patients living in wooded areas in and near Lyme, Connecticut, Lyme disease is a potentially debilitating bacterial infection that is transmitted to humans by the bite of a very small tick. These ticks feed primarily on deer and mice—although they may also be found on cats, dogs, and birds—and individuals who work or play in wooded, brushy areas are prime targets for tick bites.

While it is most prevalent in the coastal Northeast and in Wisconsin, Minnesota, northern California, and Oregon, Lyme disease has been reported in almost every State. Hence, all Americans should be aware of the importance of prevention and early detection.

Persons who spend time in wooded areas are advised to take precautions against being bitten by the tick that carries Lyme disease. These measures include using tick repellents, avoiding long grass or brush, covering up well with light-colored slacks and long-sleeved shirts, and carefully examining oneself for ticks after returning from the out-of-doors.

Early symptoms of Lyme disease may include a red, bull's-eye-shaped rash at the site of a tick bite, headache, low-grade fever, joint pain, and fatigue. Fortunately, when the disease is detected early, most persons respond well to treatment with antibiotics. If left undetected, however, Lyme disease can lead to chronic arthritis and to serious problems of the nervous system and heart. Therefore, persons who are at risk of contracting Lyme disease and who exhibit symptoms are urged to consult their physician.

Federal agencies such as the National Institutes of Health and the Centers for Disease Control, along with numerous physicians and scientists in the private sector, are continuing the fight against Lyme disease. Researchers are developing more reliable diagnostic laboratory tests, as well as new therapies for the disease. They are also making progress toward a vaccine while studying new ways to eradicate the tick-borne bacterium that causes Lyme disease.

In support of these efforts, the Congress, by Public Law 102–319, has designated the week beginning July 26, 1992, as "Lyme Disease Awareness Week" and has requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim the week beginning July 26, 1992, as Lyme Disease Awareness Week. I encourage all Americans to observe this week with appropriate programs and activities in order to enhance their understanding of Lyme disease.

IN WITNESS WHEREOF, I have hereunto set my hand this twentieth day of July, in the year of our Lord nineteen hundred and ninety-two, and of the Independence of the United States of America the two hundred and seventeenth.

George Bush

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Rules and Regulations

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DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 4

[Docket No. 92-15]

Description of Office, Procedures, Public Information

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Final rule.

SUMMARY: As required by the Freedom of Information Reform Act of 1986 (FOIRA), the Office of the Comptroller of the Currency (OCC) is publishing amendments to its regulations governing the disclosure of information under the Freedom of Information Act (FOIA).

The effect of this final rule is to implement amendments to FOIA contained in FOIRA. These amendments concern Exemption 7 of the FOIA (law enforcement records) and the FOIA fee and fee waiver provisions. In addition, this final rule implements Executive Order 12600, which deals with predisclosure notification procedures for confidential commercial information. This final rule also makes technical, clarifying and conforming changes to the OCC's existing FOIA regulation.

EFFECTIVE DATE: August 21, 1992.

FOR FURTHER INFORMATION CONTACT: Frank Vance, Jr., Disclosure Officer, (202) 874-4700, or Ferne Fishman Rubin, Senior Attorney, Legal Advisory Services Division, (202) 874-5330, Office of the Comptroller of the Currency, Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

Background and General Information

Freedom of Information Reform Act

The FOIRA amended the FOIA (5 U.S.C. 552) by modifying Exemption 7 and by supplying new provisions relating to charging and waiving fees. The FOIRA requires Federal agencies to issue regulations establishing a schedule of fees and procedures for determining when fees should be waived or reduced. The fee schedule must conform to guidelines issued by the Office of Management and Budget (OMB).

The FOIRA modified Exemption 7 of the FOIA, which exempts from public disclosure certain records or information compiled for law enforcement purposes, in three ways: (1) It added language to allow for an exemption based on a reasonable expectation of any number of specified harms from disclosure; (2) it added explanatory language describing a confidential source; and (3) it provided an exemption from disclosure if release of the information "would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law." This final rule incorporates these FOIRA amendments into the OCC's FOIA regulations at 12 CFR 4.16(b)(7).

The FOIRA also significantly amended the fee provision of the FOIA by establishing five classes of FOIA requesters: (1) Commercial; (2) educational institutions; (3) noncommercial scientific institutions; (4) representatives of the news media; and (5) all others. Commercial requesters are charged for the direct costs of review, search and duplication of records. Educational institutions, noncommercial scientific institutions and representatives of the news media are charged fees for direct costs of duplication, with the first 100 pages provided free of charge. All other requesters are charged fees for search and duplication, with two hours of search time and 100 pages of duplication provided free of charge. Prior to the FOIRA, requesters were not classified and charges were made in all cases for search and duplication; *i.e.*, unless fees were specifically waived or reduced, all requesters were charged the same fees.

In addition, the FOIRA amended the FOIA with respect to waiver or reduction of fees. Under FOIRA, documents are to be furnished without a fee or with a reduced fee if "disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." Prior to the FOIRA, the waiver or reduction of fees occurred when an agency determined that such waiver or reduction was in the "public interest because furnishing the information can be considered as primarily benefiting the general public." Section 4.17(h) incorporates the OCC's new schedule for charging and waiving fees.

Executive Order 12600

Executive Order 12600 (52 FR 23781, June 25, 1987), concerning confidential commercial information, requires each Executive department and agency subject to FOIA to establish procedures to give submitters of records containing confidential commercial information notice when those records are requested, and may be subject to disclosure, under FOIA. Under § 4.18(d) of this final rule, a submitter of confidential commercial information has an opportunity to make written objections to disclosure and to state all grounds upon which disclosure is opposed. Furthermore, the submitter is notified whenever a FOIA requester institutes a suit seeking to compel disclosure of the confidential commercial information provided to the OCC by the submitter.

OMB Guidelines

Revised § 4.17(h) contains the basic requirements of the FOIRA and also reflects OMB's guidelines. OMB'S proposed and final guidelines were published in the **Federal Register** on January 16, 1987 (52 FR 1982) and on March 27, 1987 (52 FR 10012), respectively. While the numbering system and titles of some portions of this final rule differ from the OMB guidelines, the substance is similar in all material respects.

Department of Justice (DOJ) Guidelines

Revised § 4.17(h)(2)(vii) is based upon guidelines issued by DOJ. The DOJ guidelines were not published in the **Federal Register**, but are available upon request from the OCC through the Disclosure Officer, Communications Division, Office of the Comptroller of the Currency, Washington, DC 20219.

Department of the Treasury Regulation

The amended regulation, as it appears below (including its fee structure), is consistent with the Department of the Treasury's FOIA regulation. See 31 CFR part 1, subpart A (1991). Should any actual or apparent inconsistency between the OCC's FOIA regulation and that of the Department of the Treasury arise in the future, the latter regulation should govern. See 31 CFR 1.1(d).

Changes from NPRM

A Notice of Proposed Rulemaking (NPRM), setting forth these amendments, was published in the **Federal Register** on August 10, 1989 (54 FR 32820). No comments were received in response to the NPRM.

This final rule includes numerous technical, clarifying and conforming changes. For example, portions have been rewritten for clarity, organizational updates have been made to include changes in the titles of OCC officials and new addresses, and certain minor revisions have been made to ensure greater conformity with the FOIA regulations of the Department of the Treasury. In addition, the list of information which may be obtained from the Federal Deposit Insurance Corporation has been updated and procedures for addressing requests for records which are the property of another Federal agency or department have been added in §§ 4.17 (c) and (d).

This final rule also contains the following changes from the NPRM:

(a) The Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Public Law No. 101–73, 103 Stat. 183 (FIRREA), requires public disclosure of certain documents. In general, section 913 of FIRREA (12 U.S.C. 1818(u)) requires public disclosure of final orders issued with respect to administrative enforcement proceedings. These final orders include cease and desist orders, civil money penalty and removal orders, capital directives, any orders issued after an administrative hearing, and modifications and terminations of such orders. Section 1212 of FIRREA (12 U.S.C. 2906) requires written evaluation of an institution's performance under the Community Reinvestment Act. Sections 4.15(a)(1) and 4.17(b)(2)(ii) of this final rule set forth procedures for obtaining the documents required to be disclosed under FIRREA.

(b) Title XXV of the Crime Control Act of 1990, Public Law No. 101–647, section 2547, 104 Stat. 4864, The Comprehensive Thrift and Bank Fraud Prosecution and Taxpayer Recovery Act of 1990 (12 U.S.C. 1818(u)), requires public disclosure of formal agreements and other enforceable documents issued with respect to administrative enforcement proceedings. This final rule reflects this statutory amendment in § 4.15(a)(1).

Further Notice and Comment

As noted above, the final rule adopts certain changes not proposed in the NPRM. The OCC has determined that no additional notice and comment period is necessary under 5 U.S.C. 553(b)(3)(A) because this final rule pertains to rules of agency procedure. Further, publication of this final rule is in the public interest. Most of the changes in the final rule improve the availability of documents, and reflect statutory and procedural amendments. Other changes merely reflect minor administrative changes which have already occurred. No area in which the final rule differs from the NPRM adversely affects the availability of public documents.

Regulatory Flexibility Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act, the Comptroller of the Currency certifies that these changes will not have a significant economic impact on a substantial number of small entities. Accordingly, a Regulatory Flexibility Analysis is not required. This final rule is procedural and technical in nature and implements statutory changes. The effects of this final rule should have minimal impact on national banks regardless of size.

Executive Order 12291

The OCC has determined that this final rule does not constitute a major rule within the meaning of Executive Order 12291. Accordingly, a Regulatory Impact Analysis is not required on the grounds that this revision (1) will not have an annual effect on the economy of $100 million or more; (2) will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (3) will not have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. This final rule is procedural and technical in nature and implements statutory changes. The effects of this final rule should have minimal impact on national banks regardless of size.

List of Subjects in 12 CFR Part 4

Freedom of information, Organization and functions (Government agencies), and Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, title 12, chapter I, part 4 of the Code of Federal Regulations is amended as follows:

1. The authority citation for part 4 is revised to read as follows:

PART 4—[AMENDED]

Authority: 5 U.S.C. 552; 12 U.S.C. 93a.

2. Section 4.13 is revised to read as follows:

§ 4.13 Forms and instructions.

(a) Information about forms utilized by the Office of the Comptroller of the Currency (OCC), other than those applicable to corporate activities, is available from:

(1) *Mailing address.* Communications Division, Mail Stop 9–13, Office of the Comptroller of the Currency, Washington, DC 20219.

(2) *Location.* 250 E Street, SW., 9th Floor, Washington, DC 20219.

(b) A list of forms utilized by the OCC and forms and instructions are available by writing to: Communications Division, Mail Stop 9–13, Office of the Comptroller of the Currency, Washington, DC 20219.

(c) A charge may be assessed for certain forms or instructions or for any form or instruction requested in large quantities.

3. Section 4.15 is amended by revising paragraphs (a) introductory text, (a)(1), and (b) to read as follows:

§ 4.15 Orders, opinions, etc. available to the public.

(a) Subject to the exceptions listed in § 4.16, the OCC makes the following documents available to the public, either in publications or upon written request, for inspection and/or copying:

(1) Final orders, agreements and other enforceable documents made in the adjudication of cases, including final orders published pursuant to 12 U.S.C. 1818(u).

* * * * *

(b) The OCC maintains and makes available to the public, upon written request, for inspection and copying, a current index identifying the various documents referred to in paragraphs (a)(1) through (4) and paragraph (a)(10) of this section issued, adopted or promulgated after July 4, 1967. The index is located in the Communications Division, Office of the Comptroller of the Currency, Washington DC 20219.

* * * * *

4. Section 4.16 is amended by revising paragraphs (a) and (b)(7) to read as follows:

§ 4.16 Other records available to public; exceptions.

(a) All OCC records, including those referred to in § 4.15, are available to any person, upon written request, for inspection and copying in accordance with §§ 4.17 and 4.17a, except as provided in paragraph (b) of this section.

(b) * * *

(7) Records or information compiled for law enforcement purposes, but only to the extent that the production of those records or information:

(i) Could reasonably be expected to interfere with enforcement proceedings;

(ii) Would deprive a person of a right to a fair trial or an impartial adjudication;

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a state, local, or foreign agency or authority or any private institution which furnished information on a confidential basis;

(v) Could reasonably be expected to disclose information furnished by a confidential source, in the case of a record or information complied by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation;

(vi) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(vii) Could reasonably be expected to endanger the life or physical safety of any individual.

* * * * *

5. Section 4.17 is revised to read as follows:

§ 4.17 Access to public records, requests for identifiable records, and service of process.

(a) *General.* This section identifies the titles of officers designated to make initial and appellate determinations with respect to requests, the officer designated to receive service of process, and addresses for delivery of requests, appeals and service of process, and the required content of requests.

(b) *Location of certain records*—(1) *In general.* Except as provided for in paragraph (b)(2) of this section, all OCC public records are available at the location listed in § 4.13(a)(2).

(2) *Exceptions.* (i) The following documents are available from the respective districts at the addresses listed in § 4.1a(b):

(A) During the period such applications are in the investigatory process in the respective districts, the public portions of applications by national banking associations to establish a branch or seasonal agency, and the public portions of applications to organize a national banking association.

(B) Records concerning matters delegated to the district offices (such as those listed in § 5.3(c) of this chapter).

(ii) The public section of Community Reinvestment Act evaluations prepared on or after July 1, 1990, pursuant to 12 U.S.C. 2906, are available from the CRA Contact, Department of Compliance Management, Office of the Comptroller of the Currency, Washington, DC 20219.

(c) *Records of another agency.* If a requested record is the property of another Federal agency or department, upon receipt of a request for the record the OCC will promptly inform the requester of this ownership and immediately will forward the request to the proprietary agency or department, for processing in accordance with the latter's regulations.

(d) *Information concerning records.* (1) The following information, other than blank forms, may be requested from the Federal Deposit Insurance Corporation, 550–17th Street, NW., Washington, DC 20429:

(i) Consolidated Reports of Condition (domestic);

(ii) Consolidated Reports of Condition (foreign and domestic);

(iii) Special Reports; and

(iv) Annual Reports of Trust Assets.

(2) Initial determinations as to whether to grant requests for all records available under §§ 4.15 and 4.16, other than those described in paragraphs (b)(2), (c) and (d) of this section, will be made by the Deputy Comptroller for Communications or that person's designee. Requests for such records shall be submitted to:

(i) *Mailing address.* Disclosure Officer, Communications Division, Mail Stop 9–13, Office of the Comptroller of the Currency, Washington, DC 20219.

(ii) *Location.* 250 E Street, SW., 9th Floor, Washington, DC 20219.

(3) Initial determinations as to whether to grant requests for records described in paragraph (b)(2)(i) of this section as being located in the district offices will be made by the Deputy Comptroller for each respective district, or that person's designee. All requests for those records shall be submitted to the respective Deputy Comptroller at the address set forth in § 4.1a(b).

(e) *Administrative appeal of initial determination to deny records.* Requesters shall submit appeals in writing within 35 days of the date of the initial denial and shall state the circumstances, reasons or arguments advanced in support of disclosure of the requested records. Appellate determinations with respect to requests for OCC records will be made by the Comptroller of the Currency or that person's designee. Requesters shall submit appeals to:

(1) *Mailing address.* Disclosure Officer, Communications Division, Mail Stop 9–13, Office of the Comptroller of the Currency, Washington, DC 20219.

(2) *Location.* 250 E Street, SW., 9th Floor, Washington, DC 20219.

(f) *Service of process.* Service of process by litigants seeking access to OCC records will be received by the Chief Counsel, and shall be served at the following location:

(1) *Mailing address.* Chief Counsel, Office of the Comptroller of the Currency, Washington, DC 20219.

(2) *Location.* 250 E Street, SW., 9th Floor, Washington, DC 20219.

(g) *Content of request for identifiable records.* A request for OCC records available under §§ 4.15 and 4.16 must be in writing and state the full name, address and telephone number of the person requesting access to the records and a reasonable description of the records sought. A reasonable description includes sufficient detail to enable OCC personnel who are familiar with the subject area of the request to locate the records with a reasonable amount of effort. A request for records must also state how the documents released will be used (See § 4.17(h)). The OCC may determine from the use specified in the request that the requester is a "commercial use requester". If the OCC has reasonable cause to doubt the use to which a requester will put the records sought, or if that use is not clear from the request itself, the OCC will seek additional clarification before assigning the request to a specific category.

(h) *Fees for document search, review, and duplication; waiver and reduction of fees*—(1) *Definitions*—(i) *Direct costs* means those expenditures which the OCC actually incurs in searching for and duplicating (and in the case of commercial use requesters, reviewing) documents to respond to a request for information under the Freedom of Information Act (FOIA).

(ii) *Search* means all time spent by OCC personnel in locating documents

that are responsive to a request, including page-by-page or line-by-line identification of material within documents. Searches may be done manually and/or by computer.

(iii) *Duplication* means the process of making a copy of a document necessary to respond to a FOIA request. Such copies can take the form of paper copy, microform, audiovisual materials, or machine readable documentation (*e.g.*, magnetic tape or disk), among others.

(iv) *Review* means the process of examining documents located in response to a request to determine whether any portion of any document may be withheld. It also includes the processing of any documents for disclosure.

(v) *Commercial use request* means a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made.

(vi) *Educational institution*, whether public or private, means a preschool, an elementary or secondary school, an institution of undergraduate or graduate higher education, an institution of professional education, or an institution of vocational education which operates a program or programs of scholarly research.

(vii) *Noncommercial scientific institution* means an institution that is not operated on a "commercial" basis, as that term is defined in paragraph (h)(1)(v) of this section, and which is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

(viii) *Representative of the news media* means any person actively gathering news for, or a free-lance journalist who reasonably expects to have his or her work product published or broadcast by an entity that is organized and operated to publish or broadcast news to the public. The term "news" mean information that is about current events or that would be of current interest to the public.

(2) *Fees.* The dollar amount of fees which the OCC may charge to FOIA requesters will be set forth in the "Notice of Comptroller of the Currency Fees" issued in December of each year, or in an amended or "Interim Notice of Comptroller of the Currency Fees" which may be issued from time to time throughout the year as necessary. Such Notices may be obtained from the OCC's Communications Division, Washington, DC 20219. The fees implemented in the December and Interim or amended Notices will be effective 30 days after issuance. The OCC may charge fees that recoup the full allowable direct costs it incurs. The OCC may contract with no-government enterprises to locate, reproduce, and/or disseminate records; provided however, that the OCC has determined that the ultimate cost to the requester will be no greater than it would be if the OCC performed these tasks itself. In no case will the OCC contract out responsibilities which the FOIA provides that the Comptroller of the Currency alone may discharge, such as determining the applicability of an exemption or whether to waive or reduce fees. Fees are subject to change as costs change.

(i) *Searches other than for computerized records.* The OCC will charge for records at the salary rate(s) of the employee(s) making the search. Such rate(s) will be reflected in the December or Interim "Notice of Comptroller of the Currency Fees" described in this paragraph (h)(2). Where a single class of personnel (*e.g.*, all administrative/clerical, or all professional/executive) is used exclusively, an average rate for the range of grades typically involved may be established at the OCC's discretion. This charge includes transportation, at actual cost, of personnel and records necessary to the search.

(ii) *Searches for Computerized records.* The fee for searches of computerized records is the actual direct cost of the search, including computer time, computer runs and the operator's salary. The fee for a computer printout is the actual cost.

(iii) *Duplication of records.* (A) The per-page fee for paper copy reproduction of documents will be reflected in the December or Interim "Notice of Comptroller of the Currency Fees" described in this paragraph (h)(2);

(B) If any other method of duplication is used, the OCC will charge the actual direct cost of duplicating the documents.

(iv) *Review of records.* The OCC will charge commercial use requesters for review of records at the initial administration level at the salary rate(s) of the employee(s) conducting the review. Such rate(s) will be reflected in the December or Interim "Notice of Comptroller of the Currency Fees" described in this paragraph (h)(2). Where a single class of personnel (*e.g.*, all administrative/clerical, or all professional/executive) is used exclusively, an average rate for the range of grades typically involved may be established at the OCC's discretion.

(v) *Fees to exceed $25.* If the OCC estimates that duplication and/or search fees are likely to exceed $25, it will notify the requester of the estimated amount of fees, unless the requester has indicated in advance a willingness to pay fees as high as those anticipated. If so notified by the OCC, the requester will have an opportunity to confer with OCC personnel in order to revise the request in hopes of meeting his or her needs at a lower cost. The administrative time limits in 5 U.S.C. 552(a)(6) (*i.e.*, ten (10) business days from the receipt of initial requests and 20 business days from the receipt of appeals from an initial denial, plus permissible extensions of these time limits) will begin only after the OCC receives a revised request from the requester.

(vi) *Other services.* Complying with requests for special services is at the OCC's discretion. The OCC may recover the full costs of providing such services to the extent it elects to provide them.

(vii) *Restriction on assessing fees.* The OCC will not charge fees to any requester, including commercial use requesters, if the cost of collecting a fee would be equal to or greater than the fee itself.

(viii) *Waiving or reducing fees.* The OCC will waive or reduce fees under this section whenever, in its opinion, disclosure of information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

(A) The following factors are used in determining whether a waiver or reduction of fees is in the public interest:

(*1*) *The subject of the request.* Whether the subject of the requested records concerns the operations or activities of the government;

(*2*) *The informative value of the information to be disclosed.* Whether the disclosure is likely to contribute to an understanding of government operations or activities;

(*3*) *The contribution to an understanding of the subject by the general public.* Whether disclosure of the requested information will contribute to public understanding of the subject; and

(*4*) *The significance of the contribution to public understanding.* Whether the disclosure is likely to contribute significantly to public understanding of government operations or activities.

(B) If the public interest requirement in paragraph (h)(2)(vii)(A) of this section is met, the OCC will then make a determination on the "commercial

interest" requirement, based upon the following factors:

(1) *The existence and magnitude of a commercial interest.* Whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so,

(2) *The primary interest in disclosure.* Whether the magnitude of the identified commercial interest of the requester is sufficiently large in comparison with the public interest in disclosure, that disclosure is reasonably considered by the OCC to be primarily in the commercial interest of the requester.

(C) The OCC, if the required public interest exists and the requester's commercial interest is not primary in comparison to that public interest, will waive or reduce the fees that would normally be charged to that requester.

(3) *Fees for categories of requesters.* (i) *Commercial use requesters.* The OCC will assess fees for requesters in this category which recover the allowable costs of search, review and duplication. Commercial use requesters are not entitled to two hours of free search time or 100 free pages of duplication of documents.

(ii) *Requesters who are representatives of the news media, or educational and noncommercial scientific institution requesters.* The OCC provides documents to requesters in these categories for the cost of duplication. No fee is assessed for duplication of the first 100 pages.

(iii) *All other requesters.* The OCC assesses fees for requesters who do not fit into any of the above categories to recover the full reasonable direct cost of search and duplication. No fees are assessed for the first 100 pages of duplication or the first two hours of search time.

(4) *Interest on unpaid fees.* The OCC may assess interest charges on an unpaid bill for FOIA-related fees beginning on the 31st day following the day on which the bill was sent. Interest is charged at the rate prescribed in 31 U.S.C. 3717.

(5) *Fees for unsuccessful search; search and review of exempt records.* The OCC may assess fees for time spent searching for records, even if the records requested are not located. The OCC may also charge for search and review time if the records located are exempt from disclosure.

(6) *Aggregating requests.* When the OCC reasonably believes that a requester or group of requesters is attempting to break a request into a series of requests for the purpose of evading the assessment of fees, the OCC may aggregate the requests and charge accordingly.

(7) *Advance payment of fees.* Each FOIA requester shall include a statement agreeing to pay all fees that are properly charged. However, the OCC does not require advance payment, unless:

(i) The OCC estimates or determines that the fees are likely to exceed $250. If it appears that the fees will exceed $250, the OCC will notify the requester of the likely cost and obtain satisfactory assurance of full payment if the requester has a history of prompt payment of FOIA fees. In the case of requesters with no history of payment, the OCC will require an advance payment of the full estimated charges that will be incurred; or

(ii) The requester has previously failed to pay a fee in a timely fashion, *i.e.*, within 30 days of the date of the billing. The OCC may require such requesters to pay the full amount owed plus any applicable interest, as provided in paragraph (h)(4) of this section, or demonstrate that the fee owed has been paid, prior to processing any further record request. Under these circumstances, the OCC may also require the FOIA requester to make an advance payment of the full amount of the estimated fees before processing a new request or finishing the processing of a pending request.

(8) *Tolling of administrative time limits.* When the OCC takes action under paragraphs (h)(7) (i) or (ii) of this section, the administrative time limits prescribed in 5 U.S.C. 552(a)(6) begin only after the OCC has received the required fee payments.

6. In § 4.18, a new paragraph (d) is added to read as follows:

§ 4.18 Other rules of disclosure.

* * * * *

(d) *Procedures for protecting the confidentiality of commercial information as required by Executive Order 12600 (3 CFR, 1987 Comp., p. 235).*

(1) *Definitions.* For purposes of this section, the following definitions apply:

(i) *Confidential commercial information* means records provided to the OCC by a submitter which arguably contain material exempt from release under Exemption 4 of the Freedom of Information Act (FOIA) because disclosure could reasonably be expected to cause substantial competitive harm to the submitter thereof.

(ii) *Submitter* means any person or entity who provides confidential commercial information to the OCC. This term includes, but is not limited to, national banks and their officers, directors and principal shareholders, as well as corporations, State governments and foreign governments.

(2) *Notice to submitters of confidential commercial information.* The OCC will provide a submitter of confidential commercial information with prompt written notice of the receipt of a request seeking access to that information, whenever required to do so in accordance with paragraph (d)(3) of this section, and except as provided in paragraph (d)(7) of this section. The notice will either describe the exact nature of the confidential commercial information requested or provide copies of the records or portions of records containing that information.

(3) *When notice is required.* (i) For confidential commercial information submitted to the OCC prior to January 1, 1988, the OCC will provide the submitter thereof with notice of the receipt of a request for that information whenever:

(A) The records are less than ten (10) years old and the information has been designated by the submitter as confidential commercial information;

(B) The OCC has reason to believe that disclosure of the information could reasonably be expected to cause substantial competitive harm to the submitter; or

(C) The information is subject to a prior express commitment of confidentiality given by the OCC to the submitter.

(ii) For confidential commercial information submitted on or after January 1, 1988, the OCC will provide the submitter thereof with notice of the receipt of a request encompassing such information whenever:

(A) The submitter has in good faith designated the information as being of a commercially or financially sensitive nature; or

(B) The OCC has reason to believe that disclosure of the information could reasonably be expected to cause substantial competitive harm to the submitter.

(iii) Notice of a FOIA request seeking confidential commercial information falling within either paragraphs (d)(3) (i) or (ii) of this section is required for a period of not more than ten (10) years after the date of submission, unless the submitter of the confidential commercial information requests, and provides acceptable justification for, a specific notice period of greater duration.

(iv) Whenever possible, the submitter's claim of confidentiality should be supported by a statement or certification by an officer or authorized representative of the entity that the information in question is in fact confidential commercial information and has not been disclosed to the public.

(4) *Opportunity to object to disclosure.* Through the notice described in paragraph (d)(2) of this section, the OCC will afford the submitter of confidential commercial information ten (10) business days within which to provide the OCC with a detailed statement of any objection to disclosure of the information. That statement will specify all grounds for withholding any of the information under any exemption of the FOIA and, in the case of Exemption 4, will demonstrate why the submitter contends that the information is confidential commercial information. Information provided by a submitter pursuant to this paragraph (d)(4) may itself be subject to disclosure under the FOIA. When notice is given to a submitter under paragraph (d)(2) of this section, the OCC will advise the requester that notice has been given to the submitter of the information requested. The OCC will also advise the requester that there will be a delay in its decision of whether to grant or deny access to the information sought. The requester will be further advised that this delay by the OCC may be considered a denial of access to the records and that the requester may proceed with an administrative appeal or seek judicial review, if appropriate. However, the requester may agree to a voluntary extension of time so that the OCC may review the submitter's objections to disclosure.

(5) *Notice of intent to disclose.* The OCC will consider carefully a submitter's objections and specific grounds for nondisclosure prior to determining whether to disclose the confidential commercial information. Whenever the OCC decides to disclose confidential commercial information over the objection of the submitter thereof, the OCC will forward to the submitter a written notice which will include:

(i) A statement of the reasons for which the submitter's objections to disclosure were not sustained;

(ii) A description of the confidential commercial information to be disclosed;

(iii) A specified disclosure date, which is ten (10) business days after the notice of the final decision to release the requested information has been mailed to the submitter. A copy of the disclosure notice will be forwarded to the requester at the same time; and

(iv) A statement that if the submitter is going to seek injunctive relief, to advise the OCC immediately.

(6) *Notice of FOIA requester's lawsuit.* Whenever a FOIA requester brings suit seeking to compel disclosure of confidential commercial information covered by paragraph (d)(3) of this section, the OCC will promptly notify the submitter of the confidential commercial information that a lawsuit has been brought.

(7) *Exceptions to the notice requirement.* The notice requirement of this section shall not apply if:

(i) The OCC determines that it will not disclose the information;

(ii) The information has been made public by the submitter or has otherwise been officially made available;

(iii) Disclosure is required by law (other than 5 U.S.C. 552);

(iv) The information was acquired in the course of a lawful investigation of a possible violation of criminal law;

(v) The information requested was not designated by the submitter as confidential commercial information pursuant to paragraphs (d)(3)(ii) (A) and (B) of this section, when the submitter had an opportunity to do so at the time of submission of the information or a reasonable time thereafter, unless the OCC has substantial reason to believe that disclosure of the information would result in competitive harm; or

(vi) The designation made by the submitter in accordance with paragraph (d)(3) of this section appears obviously frivolous; except that, in such case, the OCC must provide the submitter with written notice of any final administrative determination to disclose the information, at least ten (10) business days prior to the specified date when the information is to be disclosed.

Dated: July 13, 1992.

Stephen R. Steinbrink,

Acting Comptroller of the Currency.

[FR Doc. 92-16761 Filed 7-21-92; 8:45 am]

BILLING CODE 4810-33-M

FARM CREDIT ADMINISTRATION

12 CFR Part 603

RIN 3052-AB31

Privacy Act Regulations; New Exempt System of Records

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: The Farm Credit Administration (FCA) by the Farm Credit Administration Board (Board) adopts a final regulation amending part 603 of FCA regulations, that was published as a proposed regulation on March 13, 1992, 57 FR 8851. This regulation exempts the system of records, "Office of Inspector General (OIG) Investigative Files—FCA," from certain Privacy Act provisions, due to the law enforcement nature of the records.

EFFECTIVE DATE: The amendment shall become effective upon the expiration of 30 days after publication in the **Federal Register** during which either or both houses of Congress are in session. Notice of the effective date will be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Elizabeth M. Dean, Counsel to the Inspector General, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4030,

or

Rebecca S. Orlich, Senior Attorney, Regulatory and Legislative Law Division, Office of General Counsel, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4020, TDD (703) 883-4444.

SUPPLEMENTARY INFORMATION: On February 21, 1992, the FCA published an advance notice to establish a new system of records, "Office of Inspector General Investigative Files—FCA," under the Privacy Act, 5 U.S.C. 552a, as amended. See 57 FR 6221.

In conjunction with the establishment of the new system of records, the FCA Board proposed to amend FCA regulation 12 CFR 603.355 to exempt the new system of records from certain provisions of the Privacy Act. See 57 FR 8851 (March 13, 1992). The Privacy Act provisions require, among other things, that the agency provide notice when collecting information, account for certain disclosures, permit individuals access to their records, and allow them to request that the records be amended. These provisions would interfere with the conduct of OIG investigations if applied to the OIG's maintenance of the proposed system of records.

The regulation amendment would exempt the system of records under subsections (j)(2) and (k)(2) of the Privacy Act. Subsection (j)(2) of 5 U.S.C. 552a allows an exemption for a system of records maintained by "the agency component thereof which performs as its principal function any activity pertaining to enforcement of criminal laws * * *." Subsection (k)(2) of 5 U.S.C. 552a allows an exemption for a system of records consisting of "investigatory materials compiled for law enforcement purposes," where such materials are not within the scope of the (j)(2) exemption pertaining to criminal law enforcement. These exemptions are fully discussed in the supplementary information to the proposed regulation, at 57 FR 8851 (March 13, 1992).

The FCA received comments from the Farm Credit Council (FCC), a trade

association representing Farm Credit System institutions, and the Office of Management and Budget (OMB). The FCC requested that the FCA clarify that the exemptions for this system of records will be effective on the effective date of the final rule, not on the date of the establishment of the system of records. The FCA Board agrees that this is correct. With regard to the proposed regulation, OMB suggested that the FCA state in the regulation the reasons for exempting various records within law enforcement system of records from subsections of the Privacy Act. The FCA has done so.

The FCA, therefore, exempts the system of records containing the OIG investigative files under exemptions (j)(2) and (k)(2) of the Privacy Act by amending 12 CFR 603.355, in which the FCA specifies its systems of records that are exempt under the Privacy Act.

List of Subjects in 12 CFR Part 603

Privacy.

For the reasons stated in the preamble, part 603 of chapter VI, title 12 of the Code of Federal Regulations is amended to read as follows:

PART 603—PRIVACY ACT REGULATIONS

1. The authority citation for part 603 is revised to read as follows:

Authority: Secs. 5.9, 5.17 of the Farm Credit Act; 12 U.S.C. 2243, 2252, 5 U.S.C. app. 3, 5 U.S.C. 552a (j)(2) and (k)(2).

2. Section 603.355 is amended by revising the section heading; adding the paragraph designation "(a)" to the existing introductory paragraph; adding the following text to the end of newly redesignated paragraph (a); and adding a new paragraph (b) to read as follows:

§ 603.355 Exemptions.

(a) *Specific.* * * *

* * * * *

Office of Inspector General Investigative Files—FCA.

(b) *General.* (1) In addition, pursuant to 5 U.S.C. 552a (j)(2), investigatory materials compiled for criminal law enforcement in the system of records described in (b)(2) are exempt from all subsections of 5 U.S.C. 552a, except (b), (c) (1) and (2), (e)(4) (A) through (F), (e) (6), (7), (9), (10), and (11), and (i). Exemptions from the particular subsections are justified for the following reasons:

(i) From subsection (c)(3) because making available to a record subject the accounting of disclosures from records concerning him/her would reveal investigative interest on the part of the OIG. This would enable record subjects to impede the investigation by, for example, destroying evidence, intimidating potential witnesses, or fleeing the area to avoid inquiries or apprehension by law enforcement personnel.

(ii) From subsection (c)(4) because this system is exempt from the access provisions of subsection (d) pursuant to subsection (j)(2) of the Privacy Act.

(iii) From subsection (d) because the records contained in this system relate to official Federal investigations. Individual access to those records might compromise ongoing investigations, reveal confidential informants or constitute unwarranted invasions of the personal privacy of third parties who are involved in a certain investigation. Amendment of the records would interfere with ongoing criminal law enforcement proceedings and impose an impossible administrative burden by requiring criminal investigations to be continuously reinvestigated.

(iv) From subsections (e) (1) and (5) because in the course of law enforcement investigations, information may occasionally be obtained or introduced the accuracy of which is unclear or which is not strictly relevant or necessary to a specific investigation. In the interests of effective law enforcement, it is appropriate to retain all information that may aid in establishing patterns of criminal activity. Moreover, it would impede the specific investigative process if it were necessary to assure the relevance, accuracy, timeliness and completeness of all information obtained.

(v) From subsection (e)(2) because in a law enforcement investigation the requirement that information be collected to the greatest extent possible from the subject individual would present a serious impediment to law enforcement in that the subject of the investigation would be informed of the existence of the investigation and would therefore be able to avoid detection, apprehension, or legal obligations or duties.

(vi) From subsection (e)(3) because to comply with the requirements of this subsection during the course of an investigation could impede the information gathering process, thus hampering the investigation.

(vii) From subsections (e)(4) (G), and (H), and (I), (e)(8), (f), (g) and (h) because this system is exempt from the access provisions of subsection (d) pursuant to subsection (j) of the Privacy Act.

(2) Office of Inspector General Investigative Files—FCA.

Dated: July 16, 1992.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 92-17259 Filed 7-21-92; 8:45 am]

BILLING CODE 6705-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 177 and 178

[Docket Nos. 86F-0340 and 86F-0341]

Indirect Food Additives: Polymers, Adjuvants, Production Aids and Sanitizers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additives regulations to provide for the safe use of ethylene-carbon monoxide copolymers as components of food packaging and to provide that these copolymers may be sterilized with hydrogen peroxide for use in contact with food. This action is in response to two petitions filed by The Dow Chemical Co.

DATES: Effective July 22, 1992; written objections and requests for a hearing by August 21, 1992. The Director of the Office of the Federal Register approves the incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 of certain publications in 21 CFR 177.1312(c)(2), effective July 22, 1992.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION: Julius Smith, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-254-9500.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of September 2, 1986 (51 FR 31175), FDA announced that a food additive petition (FAP 6B3948) had been filed by The Dow Chemical Co., Midland, MI 48674, proposing that the food additive regulations be amended to provide for the safe use of ethylene-carbon monoxide copolymers as a component of food packaging materials. In another notice published in the **Federal Register** of September 24, 1986 (51 FR 33925), FDA announced that a petition (FAP

6B3949) had been filed by The Dow Chemical Co., proposing that the food additive regulations be amended to provide for the safe use of ethylene-carbon monoxide copolymers as a heat-seal layer for food-contact packaging when they are sterilized with hydrogen peroxide solutions.

FDA has evaluated the data in the petitions and other relevant material. The agency concludes that the food additive regulations should be amended by adding new § 177.1312 *Ethylene-carbon monoxide copolymers* (21 CFR 177.1312) to provide for their safe use as food-contact materials, and in 21 CFR 178.1005 by adding a new entry in the table in paragraph (e)(1) to provide that these coploymers may be sterilized with hydrogen peroxide, as set forth below.

In accordance with § 171.1(h) (21 CFR 171.(h)), the petitions and the documents that FDA considered and relied upon in reaching its decision to approve these petitions are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has considered the potential environmental effects of this action. In the environmental assessments for these petitions, the petitioner states that inclusion of carbon monoxide in the polymer chain allows the polymer to readily degrade when exposed to ultraviolet (UV) radiation. Thus, the potential exists for the introduction into the environment of degradation products and additives from the degrading copolymers, if the subject copolymers are exposed to UV radiation. The petition also states that the subject copolymers are expected to be used as inner layers that are protected from UV radiation. Because of these expected uses, the environmental assessments for these petitions do not assess the potential environmental impact of the enhanced degradation of the subject copolymers. Because this potential environmental impact has not been addressed and to assure that the subject copolymers will not be used in a manner such that they would be likely to be exposed to UV radiation, the regulation for the subject copolymers restricts the uses to inner layers of articles.

Based on careful consideration of the potential environmental effects of this action, FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may at any time on or before August 21, 1992, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 177

Food additives, Food packaging, Incorporation by reference.

21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director of the Center for Food Safety and Applied Nutrition, 21 CFR parts 177 and 178 are amended as follows:

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

1. The authority citation for 21 CFR part 177 continues to read as follows:

Authority: Secs. 201, 402, 409, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 376).

2. Section 177.1312 is added to subpart B to read as follows:

§ 177.1312 Ethylene-carbon monoxide copolymers.

The ethylene-carbon monoxide copolymers identified in paragraph (a) of this section may be safely used as components of articles intended for use in contact with food subject to the provisions of this section.

(a) *Identity.* For the purposes of this section, ethylene-carbon monoxide copolymers (CAS Reg. No. 25052–62–4) consist of the basic polymers produced by the copolymerization of ethylene and carbon monoxide such that the copolymers contain not more than 30 weight-percent of polymer units derived from carbon monoxide.

(b) *Conditions of use.* (1) The polymers may be safely used as components of the food-contact or interior core layer of multilaminate food-contact articles.

(2) The polymers may be safely used as food-contact materials at temperatures not to exceed 121 °C (250 °F).

(c) *Specifications.* (1) Food-contact layers formed from the basic copolymer identified in paragraph (a) of this section shall be limited to a thickness of not more than 0.01 centimeter (0.004 inch).

(2) The copolymers identified in paragraph (a) of this section shall have a melt index not greater than 500 as determined by ASTM method D1238–82, condition E "Standard Test Method for Flow Rates of Thermoplastics by Extrusion Plastometer," which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the American Society for Testing Materials, 1916 Race St., Philadelphia, PA 19103, or may be examined at the Division of Food and Color Additives, Center for Food Safety and Applied Nutrition (HFF–330), Food and Drug Administration, 200 C St. SW., Washington, DC, or at the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC.

(3) The basic copolymer identified in paragraph (a) of this section, when extracted with the solvent or solvents characterizing the type of food and under the conditions of time and temperature characterizing the conditions of its intended use, as determined from Tables 1 and 2 of § 176.170(c) of this chapter, yields net chloroform-soluble extractives in each extracting solvent not to exceed 0.5 milligram per square inch of food-contact surface when tested by methods described in § 176.170(d) of this chapter.

(4) The provisions of this section are not applicable to ethylene-carbon monoxide copolymers complying with § 175.105 of this chapter.

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

3. The authority citation for 21 CFR part 178 continues to read as follows:

Authority: Secs. 201, 402, 409, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 376).

4. Section 178.1005 is amended in the table in paragraph (e)(1) by alphabetically adding a new entry under the headings "Substances" and "Limitations" to read as follows:

§ 178.1005 Hydrogen peroxide solution.

* * * * *

(e) * * *

(1) * * *

Substances	Limitations
* * * * *	
Ethylene-carbon monoxide copolymers.	Complying with § 177.1312 of this chapter.
* * * * *	

* * * * *

Dated: July 8, 1992.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 92-17181 Filed 7-21-92; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

Schedules of Controlled Substances: Exempt Anabolic Steroid Products

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Interim rule and request for comments.

SUMMARY: The Drug Enforcement Administration (DEA) is designating certain pharmaceuticals as exempt anabolic steroid products. This action is part of the ongoing implementation of the Anabolic Steroid Control Act of 1990.

DATES: Effective Date: July 22, 1992 Comments must be submitted on or before September 21, 1992.

ADDRESSES: Comments and objections should be submitted to: Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA Federal Register Representative/CCR.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug and Chemical Evaluation Section, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 307-7183.

SUPPLEMENTARY INFORMATION: Section 1903 of the Anabolic Steroids Control Act of 1990 (ASCA) (title XIX of Pub. L. 101-647) provides that the Attorney General may exempt products which contain anabolic steroids from all or any part of the Controlled Substances Act (CSA) (21 U.S.C. 801 et seq.) if the products have no significant potential for abuse. The authority to exempt these products was ultimately delegated to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration. The procedure for implementing this section of the ASCA was published in the **Federal Register** by the DEA on August 30, 1991 (56 FR 42935). Applications which were in conformance with the announcement were received and were forwarded to the Secretary of Health and Human Services for his evaluation.

The Deputy Assistant Administrator, having reviewed the applications, the recommendations of the Secretary, and other relevant information, finds that each of the products described below has no significant potential for abuse because of its concentration, preparation, mixture or delivery system.

Interested persons are invited to submit their comments in writing with regard to this interim rule.

The listing of these products in 21 CFR 1308.34 relieves persons who handle them in the course of legitimate business from the registration, records, reports, prescription, physical security, import, and export requirements associated with Schedule III substances. Accordingly, the Deputy Assistant Administrator certifies that this action will have no negative economic impact upon small entities whose interests must be considered under the Regulatory Flexibility Act (5 U.S.C. 601, et seq.).

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this matter does not have sufficient federalism implications to require the preparation of a Federalism Assessment.

It has been determined that drug control matters are not subject to review by the Office of Management and Budget (OMB) pursuant to the provisions of Executive Order 12291. Accordingly, this action is not subject to those provisions of Executive Order 12778 which are contingent upon review by OMB. Nevertheless, the Deputy Assistant Administrator has determined that this is not a "major rule," as that term is used in Executive Order 12291, and that it would otherwise meet the applicable standards of sections 2(a) and 2(b)(2) of Executive Order 12778.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Narcotics, Prescription drugs.

Under the authority vested in the Attorney General by title XIX of Public Law 101-647, as delegated to the Administrator of the DEA pursuant to 21 U.S.C. 871(a) and 28 CFR 0.100, and delegated to the Deputy Assistant Administrator, Office of Diversion Control in 28 CFR 0.104, appendix to subpart R, section 7(g), the Deputy Assistant Administrator of the Office of Diversion Control hereby amends 21 CFR part 1308 as set forth below:

PART 1308—[AMENDED]

1. The authority citation for 21 CFR part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b) unless otherwise noted.

2. In § 1308.34, the table is revised to read as follows:

§ 1308.34 Exempt anabolic steroid products.

* * * * *

TABLE OF EXEMPT ANABOLIC STEROID PRODUCTS

Trade name	Company	NDC code	Form	Ingredients	Quantity
Estratest	Solvay Pharmaceuticals, Marietta, GA	#0032-1026	TB	Esterified estrogens	1.25 mg
				Methyltestosterone	2.5 mg
Estratest HS	Solvay Pharmaceuticals, Marietta, GA	#0032-1023	TB	Esterified estrogens	0.625 mg
				Methyltestosterone	1.25 mg

TABLE OF EXEMPT ANABOLIC STEROID PRODUCTS—Continued

Trade name	Company	NDC code	Form	Ingredients	Quantity
Premar in with Methyltestosterone	Ayerst Labs. Inc., New York, NY	#0046-0879	TB	Conjugated estrogens Methyltestosterone	1.25 mg 10.0 mg
Premar in with Methyltestosterone	Ayerst Labs. Inc., New York, NY	#0046-0878	TB	Conjugated estrogens Methyltestosterone	0.625 mg 5.0 mg
Testosterone Cypionate—Estradiol Cypionate Injection.	Steris Labs. inc., Phoenix, AZ	#0402-0257	Vial	Testosterone cypionate Estradiol cypionate	50 mg/ml 2 mg/ml
Testosterone Enanthate—Estradiol Valerate Injection.	Steris Labs. Inc., Phoenix, AZ	#0402-0360	Vial	Testosterone enanthate Estradiol valerate	90 mg/ml 4 mg/ml

* * * * *

Dated: July 15, 1992.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 92-17202 Filed 7-21-92; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 48 and 602

[T.D. 8421]

RIN 1545-AP48

Gasoline Excise Tax

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final Regulations.

SUMMARY: This document contains final regulations relating to the federal excise tax on gasoline. These regulations reflect and implement certain changes made by the Tax Reform Act of 1986 and the Revenue Reconciliation Act of 1990. These regulations affect refiners, importers, and distributors of gasoline and provide guidance relating to taxable transactions, persons liable for tax, gasoline blendstocks, and gasohol.

EFFECTIVE DATES: These regulations are effective January 1, 1993, except that § 48.4081-9 is effective July 1, 1991.

FOR FURTHER INFORMATION CONTACT: Frank Boland, (202) 566-4475 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this final regulation has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)) under control number 1545-1270. The estimated annual burden per respondent varies from .1 hour to .25 hours, depending on individual circumstances, with an estimated average of .2 hour.

These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to the Internal Revenue Service. Individual respondents may require greater or less time depending on their particular circumstances.

Comments regarding the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Internal Revenue Service, attn: IRS Reports Clearance Officer, T:FP, Washington, DC 20224, and to the Office of Management and Budget, attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Background

Sections 4081 and 4082 of the Internal Revenue Code impose, and provide certain rules relating to, the federal gasoline excise tax. Sections 4081 and 4082 were amended in relevant part by the Tax Reform Act of 1986 (the "1986 Act") and the Revenue Reconciliation Act of 1990 (the "1990 Act").

On August 27, 1991, the IRS published in the **Federal Register** (56 FR 42287) proposed amendments to the regulations (26 CFR part 38) under sections 4081 and 4082. The IRS received a number of comments with respect to the proposed regulations, and a public hearing was held on November 25, 1991. After consideration of all comments received and statements made at the public hearing, the proposed regulations are adopted as revised by this Treasury decision.

Significant Issues Raised in Comments and Changes Made by the Final Regulations

Overview

Three major issues were raised in the public comments on the proposed regulations: (1) The identity of the person liable for tax on removal of gasoline at the terminal rack, (2) the treatment of gasoline blendstocks, and (3) the refund procedures under section 4081(e). Generally, the final regulations adopt the proposed rule that the position holder is liable for tax on removal of gasoline at the terminal rack, modify the proposed rules for gasoline blendstocks to allow tax-free nonbulk transfers of gasoline blendstocks to approved terminals and refineries, and modify the proposed refund procedures by revising the form and content of the claim for a refund. The final regulations generally are effective on and after January 1, 1993. Transitional rules are provided for the period from July 1, 1991, to December 31, 1992.

Definitions (§ 48.4081-1)

Under the proposed regulations, the term "bulk transfer" means any transfer of gasoline by pipeline or marine vessel. Several commentators suggested that the term be expanded to include a gasoline registrant's transfer of its gasoline by truck or rail car from one approved terminal to another approved terminal.

The final regulations do not adopt this suggestion. The principal purpose of the 1990 Act amendments to section 4081 was to make all nonbulk removals of gasoline from a terminal taxable. Enforcement of the federal gasoline excise tax is greatly complicated if some removals of gasoline at the terminal rack are exempt from tax.

In response to a comment, the final regulations clarify that entry into the United States does not occur when gasoline is brought into Puerto Rico (which is part of the United States customs territory). However, entry into the United States does occur when gasoline is brought into the United States from Puerto Rico.

The final regulations shorten the term "gasoline blend stocks and additives" to "gasoline blendstocks" and adopt the list of gasoline blendstocks contained in the proposed regulations, with certain modifications.

In the final regulations, the term "debutanized natural gasoline" is replaced by the term "natural gasoline."

The proposed regulations included in the list of gasoline blendstocks a mixture of two or more gasoline blendstocks if the mixture is not gasoline. One commenter suggested that this product be deleted from the list because such a mixture generally has lost its effectiveness as a blendstock. The final regulations adopt this suggestion.

Notice 88–16, 1988–1 C.B. 482, provides that the term "gasoline blendstocks" does not include any product that cannot be blended into gasoline without further processing or fractionation. One commentator suggested that the final regulations incorporate this principle, and the final regulations do so.

One commentator suggested that the definition of the term "transmix containing gasoline" be revised to avoid unnecessary accounting for transmix that contains only insignificant amounts of gasoline. This revision is now unnecessary because only transmix containing gasoline that can be blended into gasoline without further processing or fractionation is considered a gasoline blendstock under the final regulations.

Tax on Removal at a Terminal Rack (§ 48.4081–2)

The Proposed Regulations

Under proposed § 48.4081–2(b), tax is imposed on gasoline removed from a terminal at the rack. Under existing rules, the person liable for tax is the owner of the gasoline at the time of removal. However, under proposed § 48.4081–2(c), the person liable for tax is the position holder (the "position holder rule"). Proposed § 48.4081–1(m) defines the position holder to be the person that holds the inventory position to the gasoline as reflected on the records of the terminal operator. This is generally a person that has a contract with the terminal operator for the use of storage facilities and terminaling services at a terminal for the gasoline, but the term also includes a terminal operator that owns gasoline in its own terminal.

A position holder may not necessarily own the gasoline when it is removed at the rack. This may occur, for example, because the position holder transfers title to the gasoline to a buyer without any physical movement of the gasoline and without changing the holder of the inventory position on the terminal operator's books. A similar result occurs under various financing arrangements or when a position holder merely subleases its space in the terminal without informing the terminal operator of the sublease. Another common transaction in which one person owns the gasoline and another person holds the inventory position is a location exchange. As an example of a location exchange, M operates a terminal in Maryland and N operates a terminal in New Jersey. X, a customer of M, wants to buy gasoline in New Jersey. To accommodate its customer, M exchanges the gasoline with N, without transferring inventory positions on the books of the terminal operators.

Under existing rules, these transactions can be conducted on a tax-free basis so long as the gasoline is transferred between registered persons. Under the position holder rule, no tax is imposed when title to gasoline is transferred in the terminal without changing the person holding the inventory position on the books of the terminal operator because the transfer is not treated as a sale. See proposed § 48.4081–1(r). However, a position holder remains liable for the tax imposed when the gasoline is subsequently removed at the terminal rack. Thus, in the above example, N, the position holder, would be liable for the tax when M's customer, X, removes the gasoline at N's terminal rack.

Public Comments

Several commentators argued that, because the position holder remains liable for the tax imposed when the gasoline is subsequently removed at the terminal rack, the position holder will include the amount of that tax in the price it charges its buyer. This will result in an increased outlay for the buyer that will not be recovered until the buyer sells the gasoline and includes the amount of the tax in the price it charges its customer.

According to the commentators, the change in pricing under the position holder rule would increase costs for market participants, reduce competition, and impair the ability of the market to respond to changes in supply and demand. For example, commentators argued that smaller companies may find it difficult or expensive to finance the increased cost of buying gasoline at a tax-included price. Moreover, because of their limited financial resources and access to credit, these companies may not be able to become position holders themselves in order to buy gasoline tax free. As a result, these companies may withdraw from a segment of the gasoline market, making it less competitive.

As another example, commentators suggested that the position holder rule would decrease the frequency of exchanges and increase their cost. Companies might have to create a burdensome and expensive "tax invoice" system in order to by properly reimbursed for the amount of the tax from their exchange partners. This could be especially problematic for complex arrangements involving multiple parties and facilities.

The commentators suggest that additional costs and dislocations also may result where the position holder charges its buyer for the amount of the tax it expects to be due, but no tax is imposed because the buyer (or a subsequent buyer) removes the gasoline from the terminal in bulk or a reduced rate of tax is imposed because the buyer (or a subsequent buyer) sells the gasoline at the terminal rack to a gasohol blender. According to the commentators, new and perhaps costly mechanisms will need to be developed to reimburse such a buyer (or subsequent buyer) for the excess of the amount it paid its seller in respect of tax over the amount of tax, if any, actually due from the position holder. One effect may be to limit opportunities for gasohol blenders to purchase gasoline at the reduced rate.

Accordingly, several commentators argued that the final regulations should retain the existing rules concerning the identity of the person liable for tax when gasoline is removed at the rack. Alternatively, one commentator suggested modifying the proposed regulations so that the receiving party in an exchange would be primarily liable for the tax while the position holder would be secondarily liable for tax. Another commentator proposed that a terminal operator should be allowed to recognize any gasoline registrant as a position holder even though the registrant does not have a terminaling and storage agreement with the operator.

The Final Regulations

The final regulations adopt the position holder rule as proposed, with the effective date delayed until January 1, 1993, in order to allow additional time for companies to adjust to that rule. The position holder rule provides the most effective method of assuring that the proper amount of gasoline tax is paid. The Service recognizes that the position holder rule may cause some companies to incur costs in restructuring some business relationships and accounting procedures and that the effect on certain companies may be greater than on others. However, the Service believes that each alternative to the position holder rule imposes significant compliance burdens that would not be

distributed equally among participants in the industry. Moreover, any disadvantages of the rule should be more than offset by the benefits legitimate businesses will achieve through the elimination of rules that allow significant opportunities for unfair competition through tax evasion. These legitimate businesses will be better able to compete if everyone in their market pays the same amount of tax on a gallon of gasoline.

Congress, the Executive Branch, state governments, and various segments of the petroleum industry have long been concerned with the problem of gasoline tax evasion. See Compliance with Federal Gasoline Excise Tax Provisions: Hearing before the Subcommittee on Oversight of the House Committee on Ways and Means, 99th Cong., 2nd Sess. (1986); and Shortfalls in Highway Trust Fund Collections: Hearing before the Subcommittee of Investigations and Oversight of the House Committee of Public Works and Transportation, 101st Cong., 1st Sess. (1989). Congress addressed these concerns by twice changing the law in recent years. The 1986 Act moved the point of taxation from the producer's sale of gasoline to the earlier of the sale or removal of gasoline from the terminal, effective January 1, 1988. The 1990 Act provided that the removal of gasoline at the terminal rack was subject to tax regardless of whether the gasoline had previously been subject to tax, effective July 1, 1991.

Neither the 1986 Act nor the 1990 Act identifies the person that is required to pay the tax to the government. Instead, the conference report to the 1990 Act, H.R. Conf. Rep. No. 964, 101st Cong., 2d Sess. 1052 (1990), confirms that the IRS is to provide rules and administrative procedures for determining liability for payment of the tax. Congress clearly intended that IRS develop rules to assure that tax is, in fact, paid to the government.

The existing rule that the owner of the gasoline at the time of the taxable event is liable for the tax has allowed certain persons to obscure the identity of the taxpayer through a complex chain of sales among related parties. This creates the potential for, and according to several commentators and authorities has resulted in, considerable gasoline tax evasion.

Under the position holder rule, the taxpayer with respect to a removal at the terminal rack will be either the terminal operator or a person that has a contractual relationship with the terminal operator. Thus, the IRS can easily identify the person liable for tax by examining the records of the terminal operator.

In addition, terminal operators should ensure that each position holder is registered with the IRS because the terminal operator may be jointly and severally liable for the tax if the position holder is not a gasoline registrant. As an additional check on the position holder, the terminal operator is likely for its own business purposes to review the credit and financial resources of persons requesting terminaling and storage services in the terminal.

Another important enforcement benefit of the position holder rule is that it should reduce the number of taxpayers and registrants. This will allow the IRS to maximize the effectiveness of its enforcement resources.

The recordkeeping burden associated with the position holder rule should, in most cases, be no greater than the burden for taxpayers under the existing rule. The position holder rule, in fact, reduces the burden with respect to transfers in a terminal because the transfers are not treated as sales potentially subject to tax and thus the seller need not determine whether its transferee is registered. In the case of exchanges, the Service recognizes that the position holder rule may create the need for additional recordkeeping, but believes that these transactions already require considerable recordkeeping for business and tax purposes. The position holder rule also should reduce the need for refunds under section 4081(e) because the rule will reduce the possibilities of taxable sales within a terminal.

The final regulations do not adopt the suggestion that primary liability be shifted to the receiving party in an exchange leaving the position holder only secondarily liable for tax. Unlike the position holder rule, this alternative would prevent the IRS from identifying the taxpayer through an audit of the terminal operator's books. It would require detailed recordkeeping by the parties to the exchange because each party potentially would be liable for tax with respect to the gasoline it receives and the gasoline it exchanges. It also would expand the number of taxpayers, as compared to the position holder rule, and could allow companies to obscure the identity of the taxpayer, especially in complicated, multi-party exchanges.

The final regulations also do not adopt the suggestion that a terminal operator be allowed to recognize gasoline registrants as position holders even if the registrants do not have terminaling and storage agreements with the terminal operator. Although this approach might provide throughputters with some additional flexibility, it would place a large recordkeeping burden on terminal operators. An operator would have to maintain both its regular inventory records and a new set of "tax" records so it could determine the identity of the "tax" position holder. The proposal also would expand the number of taxpayers as compared to the position holder rule.

Taxable Events Other Than Removal at the Terminal Rack (§ 48.4081–3)

Proposed § 48.4081–3 provides rules for taxing events other than the removal of gasoline at the terminal rack. These taxes are imposed on certain removals from a refinery, entries into the United States, bulk transfers not received at an approved terminal or refinery, bulk transfers by an unregistered position holder, sales to unregistered persons, and removal or sale of blended gasoline by a blender.

The final regulations generally adopt these provisions as proposed. However, proposed § 48.4081–3(b) is revised to provide that no tax is imposed on removals from a refinery rack if (1) the gasoline is removed by rail car from an approved refinery and received at an approved terminal, (2) the refinery and the terminal are operated by the same gasoline registrant, and (3) the gasoline cannot be removed by bulk transfer because the refinery is not served by pipeline or waterborne gasoline transporting vessel.

Under proposed § 48.4081–3(d), tax is imposed on the bulk transfer from a terminal if the position holder is not registered. One commentator noted that the proposed regulations did not describe the tax consequences of bulk transfers from a terminal by a person other than the position holder. The final regulations clarify that tax is not imposed on the bulk transfer from a terminal by such a person (whether or not registered) so long as the position holder with respect to the gasoline is registered. Under § 48.4081–2, tax is imposed only when gasoline is removed at the terminal rack, and bulk transfers are not removals at the terminal rack. However, tax is imposed under § 48.4081–3(e) if gasoline is removed from a terminal in a bulk transfer and is received at an unapproved terminal or refinery.

Special Rules for Gasoline Blendstocks (§ 48.4081–4)

Under the final regulations (as under the proposed regulations), gasoline blendstocks generally are treated the

same as gasoline so long as they are in the bulk transfer/terminal system. Accordingly, tax is not imposed on a bulk transfer of gasoline blendstocks if the relevant party (determined under the rules applicable to gasoline in the bulk transfer/terminal system) is a gasoline registrant.

Under Notice 88–16, a registered person may, by nonbulk transfer, remove gasoline blendstocks from a terminal or refinery tax free even if the person will use the gasoline blendstocks to produce gasoline. A registered person also may sell gasoline blendstocks tax free to another registered person even if the sale is in connection with a nonbulk removal and the gasoline will be used by the buyer to produce gasoline.

In contrast, under the proposed regulations, nonbulk removals of gasoline blendstocks are generally taxable if the blendstocks will be used to produce gasoline regardless of whether the removals are by a registered person. Under a special rule, however, ETBE, MTBE, TAME, and TBA may, by nonbulk transfer, be removed from a terminal or refinery, or brought into the United States, tax free if these products are received at an approved terminal or refinery.

Some commentators objected to the proposed treatment of nonbulk removals of gasoline blendstocks and recommended that the rules of Notice 88–16 be retained. The commentators argued that gasoline blendstocks are frequently transported between facilities in the bulk transfer/terminal system by nonbulk transfer. The effect of applying the rule in the proposed regulations would be that taxed and untaxed gasoline blendstocks often would be commingled in refineries and terminals. When gasoline produced from these blendstocks is removed at the terminal rack, a refund would be available for the portion representing previously-taxed blendstocks (but not with respect to the remainder). The recordkeeping required to determine the amount of that portion would make the proposed rule difficult to administer for taxpayers and the IRS.

Accordingly, the final regulations apply to all gasoline blendstocks the special rule that applied under the proposed regulations only to ETBE, MTBE, TAME, and TBA. Thus, tax is not imposed on nonbulk removals from a terminal or refinery, or on nonbulk entries into the United States, of any gasoline blendstocks if the person otherwise liable for tax (1) is a gasoline registrant, (2) has an unexpired notification certificate (as described in § 48.4081–5) from the operator of the terminal or refinery where the gasoline blendstocks are received, (3) does not know that any information in the certificate is false, and (4) has verified the accuracy of the notification certificate in accordance with IRS procedures.

Gasohol (§ 48.4081–6)

Regulations concerning the tolerance rule for determining the percentage of alcohol required for gasohol and the rule relating to the later blending of gasohol were published in the **Federal Register** on March 4, 1992, (57 FR 7653). These final regulations incorporate the tolerance and later blending rules without substantive change.

Conditions for, and Reporting Relating to, Refunds of Gasoline Tax Under Section 4081(e) (§ 48.4081–7)

The Proposed Regulations

Beginning July 1, 1991, section 4081 may impose tax more than once on a particular volume of gasoline. For example, gasoline sold to an unregistered person within the bulk transfer/terminal system is taxed on that sale (the "first tax") and taxed again (the "second tax") when it is removed at the terminal rack. Under the proposed regulations, each seller liable for tax on the sale of gasoline within the bulk transfer/terminal system to an unregistered buyer must include with its return of tax a statement identifying the buyer and amount and type of gasoline sold (the "first taxpayer's report"). The proposed regulations also prescribe conditions under which the person who pays the second tax to the government may obtain a refund. A claimant must (1) identify the person who paid the first tax to the government (the "first taxpayer"), (2) identify every owner in the chain of sales between the first taxpayer and the claimant, (3) obtain invoices of all the transactions in this chain of sales, (4) obtain a statement from the person who paid the first tax that such person has not claimed or received a credit for, or refund of, the first tax, and (5) obtain evidence that the claimant has met the conditions to allowance for refund of manufacturers taxes of section 6416(a) (relating to whether the claimant bore the burden of the tax) with respect to the second tax. The conditions also include, where applicable, satisfaction of the reporting requirement by the person paying the first tax and a requirement that the claimant submit a copy of the first taxpayer's report with the refund claim. These provisions were proposed to be effective on July 1, 1991.

Public Comments

Commentators argued that the information-collection requirements under the proposed regulations are too burdensome.

The Final Regulations

The final regulations retain the requirement that the claimant identify the first taxpayer and the subsequent owners of the gasoline. This requirement is necessary so that the IRS may verify that a first tax actually has been paid to the government and that the claimant has paid the second tax on the same gasoline. However, the final regulations modify the reporting and information-collection requirements so that claimants will not have to obtain invoices relating to previous sales of the gasoline. Instead, a claimant will fulfill its responsibility by including with its return a copy of the first taxpayer's report, which should be passed down the chain of sales.

Section 48.4081–7 of the final regulations set forth the format for the first taxpayer's report and expands the reporting requirement to cover all taxable events except removals at a terminal or refinery rack, nonbulk entries into the United States, and removals or sales by blenders. Reporting is optional for these events, but taxpayers are encouraged to report if they expect that a second tax will be imposed with respect to the gasoline.

Under the final regulations, in order for a person who pays a second tax to claim a refund in respect of a first tax imposed after December 31, 1992, (regardless of the point at which the first tax is imposed), a copy of the first taxpayer's report must be submitted by the person who pays the second tax. Accordingly, any first taxpayer required to report must give a copy of the report to certain persons. For example, if the first tax is imposed on the sale of gasoline within the bulk transfer/terminal system to an unregistered buyer, the first taxpayer must give a copy to the buyer. First taxpayers filing optional reports should (but are not required to) follow similar procedures for transactions outside of the bulk transfer/terminal system.

If a person receives a first taxpayer's report and subsequently sells the gasoline within the bulk transfer/terminal system (other than a sale in a terminal that does not involve a change in the position holder), that person must give a copy of the first taxpayer's report and a statement describing the subsequent sale to its buyer. A person receiving a first taxpayer's report in a

sale outside of the bulk transfer/terminal system should (but is not required to) follow a similar procedure if that person subsequently sells the gasoline and the parties expect that another tax will be imposed under section 4081 with respect to the gasoline.

If the first taxpayer's volume of gasoline is divided among more than one buyer, multiple copies of the report should be made at the stage the gasoline is divided, with appropriate notations concerning the volume sold to each buyer, so that each buyer has a copy of the first taxpayer's report.

The claimant's submission of a copy of the first taxpayer's report does not mean that the claim will be allowed. For example, a claim will not be allowed if the first taxpayer did not actually pay the first tax to the government. A claim also will not be allowed if the IRS cannot determine that the first taxpayer's report applies to the gasoline to which the claim relates.

The final regulations require the first taxpayer to state on the first taxpayer's report that it has not claimed or received a credit for, or refund of, the first tax (instead of requiring the claimant to obtain such a statement from the first taxpayer). In addition, under the final regulations, the requirements of section 6416(a) are satisfied by a statement by the claimant that it has not included the amount of the second tax in the sale price of the gasoline and has not collected that amount from its buyer.

One commentator suggested that a credit rather than a refund be allowed when the same person pays both the first and second taxes. This would occur, for example, when a taxpayer removes gasoline at a terminal rack, trucks the gasoline to a second terminal, and then removes the gasoline at the rack of the second terminal. This suggestion is not adopted because such a credit is not authorized by sections 4081(e) or 6416(d). However, the final regulations provided a simplified refund procedure in these cases.

Transitional Rules Applicable After June 30, 1991, and Before January 1, 1993 (§ 48.4081–9)

The 1990 Act amendments relating to section 4081 are effective July 1, 1991, even though §§ 48.4081–1 through 48.4081–8 are not effective until January 1, 1993.

Section 48.4081–9 of the final regulations provides transitional rules applying the 1990 Act's gasoline tax amendments during the period from July 1, 1991, to December 31, 1992. The transitional rules provide that taxable events during this period are determined under sections 4081 and 4082 and that the owner of the gasoline immediately before the taxable event is liable for tax. Where two taxes are imposed with respect to the same gasoline and the first tax is imposed before January 1, 1993, the first taxpayer need not file a first taxpayer's report and the second taxpayer need not include a copy of that report in a refund claim to satisfy the conditions for allowance under section 4081(e). For other matters, taxpayers may rely on previously published guidance to the extent this guidance is not inconsistent with section 4081, as amended by the 1990 Act. The relevant guidance in this area includes Notice 87–83, 1987–2 C.B. 393, Notice 88–16, 1988–1 C.B. 482, Notice 88–109, 1988–2 C.B. 446, Notice 89–101, 1989–2 C.B. 435, and Rev. Rul. 88–70, 1988–2 C.B. 338.

Special Analyses

It has been determined that these regulations are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations and, therefore, a final Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Frank Boland, Office of the Assistant Chief Counsel (Passthroughs & Special Industries), Internal Revenue Service. However, other persons from the Service and the Treasury Department participated in their development.

List of Subjects

26 CFR Part 48

Agriculture, Aircraft, Boats, Coal, Excise taxes, Furs, Jewelry, Motor fuels, Motor vehicles, Sporting goods, Tires.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 48 and 602 are amended as follows:

Paragraph 1. The authority citation for part 48 is amended by adding the following citations:

Authority 26 U.S.C. 7805 * * * Section 48.4081–4 also issued under 26 U.S.C. 4082(a); Section 48.4081–6 also issued under 26 U.S.C. 4081(c); Sections 48.4081–7 and 48.4081–9(e) also issued under 26 U.S.C. 4081(e) * * *

Par. 2. Subpart H of part 48 is amended as follows:

1. New § 48.4081–0 is added.
2. Sections 48.4081–1 and 48.4081–2 are revised.
3. The authority citation following § 48.4081–2 is removed.
4. New §§ 48.4081–3 through 48.4081–9 are added.
5. Sections 48.4082–1, 48.4083–1, 48.4083–2, 48.4084, the authority citation following 48.4084, 48.4084–1, and 48.9000–0 are removed.
6. The added and revised provisions read as follows:

§ 48.4081–0 Gasoline tax; table of contents.

This section lists captions contained in §§ 48.4081–1 through 48.4081–9.

Section 48.4081–1 Gasoline tax; definitions.

(a) Overview.
(b) Approved terminal or refinery.
(c) Blended gasoline.
(d) Blender.
(e) Bulk transfer.
(f) Bulk transfer/terminal system.
(g) Enterer.
(h) Entry into the United States.
(i) Gasoline.
(j) Gasoline blendstocks.
(1) In general.
(2) Products requiring further processing.
(k) Gasoline registrant.
(l) Industrial user.
(m) Position holder.
(n) Rack.
(o) Refiner.
(p) Refinery.
(q) Removal.
(r) Sale.
(1) In general.
(2) Example.
(s) Terminal.
(t) Terminal operator.
(u) Throughputter.
(v) Vessel.
(w) Effective date.

Section 48.4081–2 Gasoline tax; tax on removal at a terminal rack.

(a) Overview.
(b) Imposition of tax.
(c) Liability for tax.
(1) In general.
(2) Joint and several liability of terminal operator.
(3) Conditions for avoidance of liability.
(d) Rate of tax.
(e) Effective date.

Section 48.4081–3 Gasoline tax; taxable events other than removal at the terminal rack.

(a) Overview.
(b) Tax on the removal from a refinery.
(1) In general.

§ 48.4081–1 Gasoline tax; definitions.

(a) *Overview.* This section provides definitions for purposes of the regulations relating to the gasoline tax imposed by section 4081 of the Internal Revenue Code.

(b) *Approved terminal or refinery.* The term "approved terminal or refinery" means a terminal or refinery that is operated, respectively, by a gasoline registrant that is a terminal operator, or by a gasoline registrant that is a refiner.

(c) *Blended gasoline*—(1) *In general.* Except as provided in paragraph (c)(2) of this section, the term "blended gasoline" means gasoline that is a mixture of—

(i) Gasoline with respect to which tax has been imposed under section 4081(a); and

(ii) Any substance with respect to which tax has not been imposed under section 4081(a), other than a de minimis amount of a product such as carburetor detergent or oxidation inhibitor.

(2) *Exception.* In the case of a mixture that is gasohol (as defined in § 48.4081–6(b)(2)) the term "blended gasoline" does not include a mixture of—

(i) Gasoline with respect to which tax was imposed under section 4081(a) at a rate described in § 48.4081–6(e) (relating to gasohol) or with respect to which a valid claim is made under section 6427(f); and

(ii) Alcohol.

(d) *Blender.* The term "blender" means any person that produces blended gasoline outside the bulk transfer/terminal system.

(e) *Bulk transfer.* The term "bulk transfer" means any transfer of gasoline by pipeline or vessel.

(f) *Bulk transfer/terminal system.* The term "bulk transfer/terminal system" means the gasoline distribution system consisting of refineries, pipelines, vessels, and terminals. Thus, gasoline in a refinery, pipeline, vessel, or terminal is in the bulk transfer/terminal system. Gasoline in the fuel supply tank of any engine, or in any tank car, rail car, trailer, truck, or other equipment suitable for ground transportation is not in the bulk transfer/terminal system.

(g) *Enterer.* The term "enterer" generally means the importer of record (under customs law) with respect to the gasoline. However, if the importer of record is acting as an agent (for example, the importer of record is a customs broker engaged by the owner of the gasoline), the person for whom the agent is acting is the enterer. If there is no importer of record for gasoline entered into the United States, the owner of the gasoline at the time it is brought into the United States is the enterer.

(h) *Entry into the United States.* Gasoline is entered into the United States if, and entry occurs when—

(1) The gasoline is brought into the United States and applicable customs law requires that the gasoline be entered into the United States for consumption, use, or warehousing; or

(2) The gasoline is brought into the United States from Puerto Rico and applicable customs law would require that the gasoline be entered into the United States for consumption, use, or

warehousing if the gasoline were brought into the United States from somewhere other than Puerto Rico.

(i) *Gasoline.* The term "gasoline" means—

(1) All products (including gasohol (as defined in § 48.4081–6(b)(2))) that are commonly or commercially known or sold as gasoline and are suitable for use as a motor fuel (other than products that have an American Society for Testing Materials octane number of less than 75 as determined by the motor method); and

(2) Gasoline blendstocks.

(j) *Gasoline blendstocks*—(1) *In general.* Except as provided in paragraph (j)(2) of this section, the term "gasoline blendstocks" means—

(i) Alkylate;

(ii) Butane;

(iii) Butene;

(iv) Catalytically cracked gasoline;

(v) Coker gasoline;

(vi) Ethyl tertiary butyl ether (ETBE);

(vii) Hexane;

(viii) Hydrocrackate;

(ix) Isomerate;

(x) Methyl tertiary butyl ether (MTBE);

(xi) Mixed xylene (not including any separated isomer of xylene);

(xii) Natural gasoline;

(xiii) Pentane;

(xiv) Pentane mixture;

(xv) Polymer gasoline;

(xvi) Raffinate;

(xvii) Reformate;

(xviii) Straight-run gasoline;

(xix) Straight-run naphtha;

(xx) Tertiary amyl methyl ether (TAME);

(xxi) Tertiary butyl alcohol (gasoline grade) (TBA);

(xxii) Thermally cracked gasoline;

(xxiii) Toluene;

(xxiv) Transmix containing gasoline; and

(xxv) Any other product designated as a gasoline blendstock by the Commissioner by revenue ruling or other administrative pronouncement.

(2) *Products requiring further processing.* The term "gasoline blendstocks" does not include any product that cannot, without further processing, be used in the production of gasoline described in paragraph (i)(1) of this section. For example, a mixed hydrocarbon stream that is produced in a natural gas processing plant is not a gasoline blendstock if the stream cannot be used to produce gasoline described in paragraph (i)(1) of this section without further processing.

(k) *Gasoline registrant.* The term "gasoline registrant" means an enterer, industrial user, refiner, terminal operator, or throughputter that is registered under section 4101.

(l) *Industrial user.* The term "industrial user" means any person that receives gasoline blendstocks by bulk transfer for its own use in the manufacture of products other than gasoline described in paragraph (i)(1) of this section.

(m) *Position holder.* The term "position holder" means, with respect to gasoline in a terminal, the person that holds the inventory position in the gasoline, as reflected on the records of the terminal operator. A person holds the inventory position in gasoline when that person has a contractual agreement with the terminal operator for the use of storage facilities and terminaling services at a terminal with respect to the gasoline. The term also includes a terminal operator that owns gasoline in its terminal.

(n) *Rack.* The term "rack" means a mechanism for delivering gasoline from a refinery or terminal into a truck, trailer, railroad car, or other means of nonbulk transfer.

(o) *Refiner.* The term "refiner" means any person that owns, operates, or otherwise controls a refinery.

(p) *Refinery.* The term "refinery" means a facility used to produce gasoline from crude oil, unfinished oils, natural gas liquids, or other hydrocarbons and from which gasoline may be removed by pipeline, by vessel, or at a rack. However, the term does not include a facility where only blended gasoline or gasohol (as defined in § 48.4081–6(b)(2)), and no other type of gasoline, is produced.

(q) *Removal.* The term "removal" means any physical transfer of gasoline, and any use of gasoline other than as a material in the production of gasoline or special fuels (as defined in § 48.4041–8(f)). However, gasoline is not removed when it evaporates or is otherwise lost or destroyed.

(r) *Sale*—(1) *In general.* The term "sale" means—

(i) The transfer of title to, or substantial incidents of ownership in, gasoline (other than gasoline in a terminal) to the buyer for a consideration, which may consist of money, services, or other property; or

(ii) The transfer of the inventory position with respect to gasoline in a terminal if the transferee becomes the position holder with respect to the gasoline.

(2) *Example.* The following example illustrates the rule of this paragraph (r):

Example. B owns one million gallons of gasoline that is stored in A's terminal. B also is the position holder with respect to the gasoline. While the gasoline remains stored in the terminal, B transfers title to 200,000 gallons of the gasoline to C. C then transfers title to the 200,000 gallons to D. B continues to hold the inventory position on A's records with respect to the one million gallons. Because B continues as the position holder with respect to the gasoline, the transfers of title to the gasoline from B to C and from C to D are not sales of gasoline.

(s) *Terminal.* The term "terminal" means a gasoline storage and distribution facility that is supplied by pipeline or vessel, and from which gasoline may be removed at a rack. However, the term does not include any facility at which gasoline blendstocks are used in the manufacture of products other than gasoline (as defined in paragraph (i)(1) of this section) and from which no gasoline is removed.

(t) *Terminal operator.* The term "terminal operator" means any person that owns, operates, or otherwise controls a terminal.

(u) *Throughputter.* The term "throughputter" means any person that—

(1) Owns gasoline within the bulk transfer/terminal system (other than in a terminal); or

(2) Is a position holder.

(v) *Vessel.* The term "vessel" means a waterborne gasoline transporting vessel.

(w) *Effective date.* This section is effective January 1, 1993.

§ 48.4081–2 Gasoline tax; tax on removal at a terminal rack.

(a) *Overview.* This section provides the general rule that all removals of gasoline at a terminal rack are taxable and the position holder with respect to the gasoline is liable for the tax.

(b) *Imposition of tax.* Except as provided in § 48.4081–4 (relating to gasoline blendstocks), tax is imposed on the removal of gasoline from a terminal if the gasoline is removed at the rack.

(c) *Liability for tax*—(1) *In general.* The position holder with respect to the gasoline is liable for the tax imposed under paragraph (b) of this section.

(2) *Joint and several liability of terminal operator.* The terminal operator is jointly and severally liable for the tax imposed under paragraph (b) of this section if—

(i) The position holder with respect to the gasoline is a person other than the terminal operator and is not a gasoline registrant; and

(ii) The terminal operator has not met the conditions of paragraph (c)(3) of this section.

(3) *Conditions for avoidance of liability.* A terminal operator is not liable for tax under paragraph (c)(2) of this section if, at the time of the removal, the terminal operator—

(i) Is a gasoline registrant;

(ii) Has an unexpired notification certificate (described in § 48.4081–5) from the position holder;

(iii) Does not know that any information in the notification certificate is false; and

(iv) Has verified the accuracy of the notification certificate in accordance with such procedures as the Commissioner may provide by revenue procedure or other administrative pronouncement.

(d) *Rate of tax.* For the rate of tax generally, see section 4081(a). For the rate of tax on gasohol and on gasoline sold for gasohol production, see § 48.4081–6.

(e) *Effective date.* This section is effective January 1, 1993.

§ 48.4081–3 Gasoline tax; taxable events other than removal at the terminal rack.

(a) *Overview.* Although tax is imposed when gasoline is removed at the terminal rack, tax is also imposed in certain other situations described in this section. This section provides rules for the imposition of tax when gasoline is removed from a refinery, entered into the United States, removed by bulk transfer from a terminal by an unregistered position holder, removed by bulk transfer and not received at an approved terminal or refinery, or sold to an unregistered person within the bulk transfer/terminal system. This section also provides rules for the imposition of tax when blended gasoline is removed or sold by the blender.

(b) *Tax on removal from a refinery*—(1) *In general.* Except as provided in § 48.4081–4 (relating to gasoline blendstocks), and paragraph (b)(2) of this section (relating to an exemption for certain refineries), a tax is imposed on the removal of gasoline from a refinery if—

(i) The removal is by bulk transfer and the refiner or the owner of the gasoline immediately before the removal is not a gasoline registrant; or

(ii) The removal is at the rack.

(2) *Exemption for certain refineries.* The tax imposed under paragraph (b)(1)(ii) of this section does not apply to a removal of gasoline if—

(i) The gasoline is removed by rail car from an approved refinery and is received at an approved terminal;

(ii) The refinery and the terminal are operated by the same gasoline registrant; and

(iii) The refinery is not served by pipeline (other than a pipeline for the receipt of crude oil) or vessel.

(3) *Liability for tax.* The refiner is liable for the tax imposed under paragraph (b) of this section.

(4) *Rate of tax.* For the rate of tax generally, see section 4081(a). For the rate of tax on gasohol and on gasoline sold for gasohol production, see § 48.4081–6.

(c) *Tax on entry into the United States*—(1) *In general.* Except as provided in § 48.4081–4 (relating to gasoline blendstocks), a tax is imposed on the entry of gasoline into the United States if—

(i) The entry is by bulk transfer and the enterer is not a gasoline registrant; or

(ii) The entry is not by bulk transfer.

(2) *Liability for tax.* The enterer is liable for the tax imposed under paragraph (c) of this section.

(3) *Rate of tax.* For the rate of tax generally, see section 4081(a). For the rate of tax on gasohol and on gasoline sold for gasohol production, see § 48.4081–6.

(d) *Tax on bulk transfers from a terminal by an unregistered position holder*—(1) *In general.* A tax is imposed on the removal by bulk transfer of gasoline from a terminal if the position holder with respect to the gasoline is not a gasoline registrant.

(2) *Liability for tax*—(i) *In general.* The position holder with respect to the gasoline is liable for the tax imposed under paragraph (d)(1) of this section.

(ii) *Joint and several liability of terminal operator.* The terminal operator is jointly and severally liable for the tax imposed under paragraph (d)(1) of this section if—

(A) The position holder with respect to the gasoline is a person other than the terminal operator; and

(B) The terminal operator has not met the conditions of paragraph (d)(2)(iii) of this section.

(iii) *Conditions for avoidance of liability.* A terminal operator is not liable for tax under this paragraph (d)(2) if, at the time of the bulk transfer, the terminal operator—

(A) Is a gasoline registrant;

(B) Has an unexpired notification certificate (described in § 48.4081–5) from the position holder;

(C) Does not know that any information in the notification certificate is false; and

(D) Has verified the accuracy of the notification certificate in accordance with such procedures as the Commissioner may provide by revenue procedure or other administrative pronouncement.

(3) *Rate of tax.* For the rate of tax, see section 4081(a).

(e) *Tax on bulk transfers not received at an approved terminal or refinery*—(1) *In general.* Except as provided in § 48.4081–4 (relating to gasoline blendstocks) a tax on gasoline is imposed if—

(i) Gasoline is removed by bulk transfer from a refinery or terminal, or entered by bulk transfer into the United States;

(ii) No tax was imposed on such removal or entry under paragraph (b), (c), or (d) of this section; and

(iii) Upon removal from the pipeline or vessel, the gasoline is not received at an approved terminal or refinery (or at another pipeline or vessel).

(2) *Liability for tax*—(i) *In general.* The owner of the gasoline when it is removed from the pipeline or vessel is liable for the tax imposed under paragraph (e)(1) of this section if the owner has not met the conditions of paragraph (e)(2)(ii) of this section.

(ii) *Conditions for avoidance of liability.* An owner of gasoline is not liable for tax under paragraph (e)(2)(i) of this section if, at the time the gasoline is removed from the pipeline or vessel, the owner of the gasoline—

(A) Is a gasoline registrant;

(B) Has an unexpired notification certificate (described in § 48.4081–5) from the operator of the terminal or refinery where the gasoline is received;

(C) Does not know that any information in the notification certificate is false; and

(D) Has verified the accuracy of the notification certificate in accordance with such procedures as the Commissioner may provide by revenue procedure or other administrative pronouncement.

(iii) *Liability of the operator of the facility where the gasoline is received.* The operator of the facility where the gasoline is received is liable for the tax imposed under paragraph (e)(1) of this section if the owner of the gasoline has met the conditions of paragraph (e)(2)(ii) of this section and is jointly and severally liable for the tax if the owner has not met such conditions.

(3) *Rate of tax.* For the rate of tax, see section 4081(a).

(f) *Tax on sales within the bulk transfer/terminal system*—(1) *In general.* A tax is imposed on the sale of gasoline located within the bulk transfer/terminal system if the sale is to a person that is not a gasoline registrant and tax has not been imposed on such gasoline under § 48.4081–2, or paragraph (b), (c), (d), or (e) of this section.

(2) *Liability for tax*—(i) *In general.* The seller of the gasoline is liable for the tax imposed under paragraph (f)(1) of this section if the seller has not met the conditions of paragraph (f)(2)(ii) of this section.

(ii) *Conditions for avoidance of liability.* A seller is not liable for tax under paragraph (f)(2)(i) of this section if, at the time of the sale, the seller—

(A) Is a gasoline registrant;

(B) Has an unexpired notification certificate (described in § 48.4081–5) from the buyer;

(C) Does not know that any information in the certificate is false; and

(D) Has verified the accuracy of the notification certificate in accordance with such procedures as the Commissioner may provide by revenue procedure or other administrative pronouncement.

(iii) *Liability of the buyer.* The buyer of the gasoline is liable for the tax imposed under paragraph (f)(1) of this section if the seller of the gasoline has met the conditions of paragraph (f)(2)(ii) of this section and is jointly and severally liable for the tax if the seller has not met such conditions.

(3) *Rate of tax.* For the rate of tax, see section 4081(a).

(g) *Tax on removal or sale by the blender*—(1) *In general.* A tax is imposed on the removal or sale of blended gasoline by the blender thereof. The number of gallons of blended gasoline subject to tax is the difference between the total number of gallons of blended gasoline removed or sold and the number of gallons of previously taxed gasoline used to produce the blended gasoline.

(2) *Liability for tax.* The blender is liable for the tax imposed under paragraph (g)(1) of this section.

(3) *Rate of tax.* For the rate of tax, see section 4081(a).

(4) *Example.* The following example illustrates the provisions of this paragraph (g) and § 48.4081–1(c):

Example. (i) X, a gasoline wholesale distributor, buys 10,000 gallons of gasoline at a terminal rack. The gasoline is delivered into a tank trailer. Tax is imposed on the position holder in the terminal under § 48.4081–2(b) when the gasoline is removed at the rack. X then goes to another location where 500 gallons of alcohol (a substance not subject to tax under section 4081) are delivered into the tank trailer already containing the 10,000 gallons of gasoline. The gasoline and alcohol are splash blended as X drives to X's retail service station where X pumps the blended gasoline into a storage tank for sale to consumers.

(ii) X is a blender within the meaning of § 48.4081–1(d) because X has produced blended gasoline, as defined in § 48.4081–1(c), by mixing the 10,000 gallons of gasoline on which tax has been imposed under § 48.4081–2(b) with 500 gallons of alcohol, a substance not subject to tax under section 4081. The 10,500 gallon mixture is not gasohol because it does not satisfy the alcohol-content requirement described in § 48.4081–6(b)(2)(i). X, the blender, is liable for the tax imposed under § 48.4081–3(g) on the blended gasoline. The tax is imposed when the blended gasoline is removed from the tank trailer at the retail station. Tax is computed on 500 gallons, the number of gallons not previously subject to tax under section 4081.

(h) *Effective date.* This section is effective January 1, 1993.

§ 48.4081–4 Gasoline tax; special rules for gasoline blendstocks.

(a) *Overview.* This section provides rules exempting from tax certain removals, entries, and sales of gasoline blendstocks. Generally, under prescribed conditions, tax is not imposed on gasoline blendstocks that are not used to produce gasoline or that are received at an approved terminal or refinery.

(b) *Nonbulk removals and entries of gasoline blendstocks not used to produce gasoline)*—(1) *Removals and entries not in connection with sales.* Tax is not imposed under § 48.4081–2(b), § 48.4081–3(b)(1)(ii), or § 48.4081–3(c)(1)(ii) on the removal or entry of gasoline blendstocks not in connection with a sale if—

(i) The person otherwise liable for tax under § 48.4081–2(c)(1) (the position holder), § 48.4081–3(b)(3) (the refiner), or § 48.4081–3(c)(2) (the enterer) is a gasoline registrant; and

(ii) Such person does not use the gasoline blendstocks to produce gasoline (as defined in § 48.4081–1(i)(1)).

(2) *Removals and entries in connection with sales.* Tax is not imposed under § 48.4081–2(b), § 48.4081–3(b)(1)(ii), or § 48.4081–3(c)(1)(ii) on the removal or entry of gasoline blendstocks in connection with a sale if—

(i) The person otherwise liable for tax under § 48.4081–2(c)(1) (the position holder), § 48.4081–3(b)(3) (the refiner), or § 48.4081–3(c)(2) (the enterer) is a gasoline registrant; and

(ii) At the time of the sale, such person has an unexpired certificate (described in paragraph (e) of this section) from the buyer and has no reason to believe any information in the certificate is false.

(3) *Tax on sales after certain nonbulk removals or entries*—(i) *In general.* If paragraph (b) (1) or (2) of this section applies to the removal or entry of gasoline blendstocks, tax is imposed on any sale of such blendstocks unless, at the time of the sale, the seller—

(A) Has an unexpired certificate (described in paragraph (e) of this section) from its buyer; and

(B) Has no reason to believe any information in the certificate is false.

(ii) *Liability for tax.* The seller is liable for the tax imposed under this paragraph (b)(3).

(iii) *Rate of tax.* For the rate of tax, see section 4081.

(c) *Nonbulk removals and entries of gasoline blendstocks received at an approved terminal or refinery.* Tax is not imposed under § 48.4081–2(b), § 48.4081–3(b)(1)(ii), or § 48.4081–3(c)(1)(ii) on the removal or entry of gasoline blendstocks that are received at a terminal or refinery if the person otherwise liable for tax under § 48.4081–2(c)(1) (the position holder), § 48.4081–3(b)(3) (the refiner), or § 48.4081–3(c)(2) (the enterer)—

(1) Is a gasoline registrant;

(2) Has an unexpired notification certificate (described in § 48.4081–5) from the operator of the terminal or refinery where the gasoline blendstocks are received;

(3) Does not know that any information in the certificate is false; and

(4) Has verified the accuracy of the notification certificate in accordance with such procedures as the Commissioner may provide by revenue procedure or other administrative pronouncement.

(d) *Bulk transfer to a registered industrial user.* Tax is not imposed under § 48.4081–3(e)(1) if, upon the removal of gasoline blendstocks from a pipeline or vessel, the gasoline blendstocks are received by a gasoline registrant that is an industrial user.

(e) *Certificate*—(1) *In general.* The certificate to be provided by a buyer of gasoline blendstocks consists of a statement that is signed under penalties of perjury by a person with authority to bind the buyer, is in substantially the same form as the model certificate provided in paragraph (e)(3) of this section, and contains all information necessary to complete such model certificate. A new certificate must be given if any information in the current certificate changes. The certificate may be included as part of any business records normally used to document a sale. The certificate expires on the earliest of the following dates:

(i) The date one year after the effective date of the certificate (which may be no earlier than the date it is signed).

(ii) The date a new certificate is provided to the seller.

(iii) The date the seller is notified by the Internal Revenue Service or the buyer that the buyer's right to provide a certificate has been withdrawn.

(2) *Withdrawal of right to provide certificate.* The Internal Revenue Service may withdraw the right of a buyer of gasoline blendstocks to provide a certificate under this paragraph (e) if

such buyer uses gasoline blendstocks to which a certificate applies in the production of gasoline or resells the gasoline blendstocks without obtaining a certificate from its buyer. The Internal Revenue Service may notify any seller to whom the buyer has provided a certificate that the buyer's right to provide a certificate has been withdrawn.

(3) *Model certificate.*

Certificate of Person Buying Gasoline Blendstock for use Other Than in the Production of Gasoline

(To support tax-free sales under section 4081 of the Internal Revenue Code)

_____

_____

Name, address, and employer identification number of seller

The undersigned buyer ("Buyer") hereby certifies the following under penalties of perjury:

The gasoline blendstocks to which this certificate relates will not be used to produce gasoline.

This certificate applies to the following (complete as applicable):

If this is a single purchase certificate, check here _____ and enter:

1. Invoice or delivery ticket number _____

2. _____ (number of gallons) of _____ (type of gasoline blendstocks)

If this is a certificate covering all purchases under a specified account or order number, check here _____ and enter:

1. Effective date _____

2. Expiration date _____

(period not to exceed 1 year after the effective date)

3. Type (or types) of gasoline blendstocks _____

4. Buyer account or order number _____

Buyer will not claim a credit or refund under section 6427(h) of the Internal Revenue Code for any gasoline blendstocks covered by this certificate.

Buyer will provide a new certificate to the seller if any information in this certificate changes.

If Buyer resells the gasoline blendstocks to which this certificate relates, Buyer will be liable for tax unless Buyer obtains a certificate from the purchaser stating that the gasoline blendstocks will not be used to produce gasoline and otherwise complies with the conditions of § 48.4081–4(b)(3) of the Manufacturers and Retailers Excise Tax Regulations.

Buyer understands that if Buyer violates the terms of this certificate, the Internal Revenue Service may withdraw Buyer's right to provide a certificate.

Buyer has not been notified by the Internal Revenue Service that its right to provide a certificate has been withdrawn. In addition, the Internal Revenue Service has not notified Buyer that the right to provide a certificate has been withdrawn from a purchaser to which Buyer sells gasoline blendstocks tax free.

Buyer understands that the fraudulent use of this certificate may subject Buyer and all parties making such fraudulent use of this certificate to a fine or imprisonment, or both, together with the costs of prosecution.

_____

Signature and date signed

_____

Printed or typed name of person signing

_____

Title of person signing

_____

Name of Buyer

_____

Employer identification number

_____

Address of Buyer

(f) *Effective date.* This section is effective January 1, 1993.

§ 48.4081–5 Gasoline tax; notification certificate of gasoline registrant.

(a) *Overview.* This section set forth requirements for the notification certificate used under §§ 48.4081–2(c)(3), 48.4081–3(d)(2)(iii), 48.4081–3(e)(2)(iii), 48.4081–3(f)(2)(ii), and 48.4081–4(c) to notify another person of the gasoline registrant's registration status.

(b) *Certificate.*—(1) *In general.* The certificate to be provided by a gasoline registrant consists of a statement that is signed under penalties of perjury by a person with authority to bind the registrant, is in substantially the same form as the model provided in paragraph (b)(2) of this section, and contains all information necessary to complete such model. A new certificate must be given if any information in the most recently provided certificate changes. The certificate may be included as part of any business records normally used to document a sale. The certificate expires on the earlier of the following dates:

(i) The date the registrant provides a new certificate.

(ii) The date the recipient of the certificate is notified by either the Internal Revenue Service or the registrant that the registrant's registration has been revoked or suspended.

(2) *Model certificate.*

Notification Certificate of Gasoline Registrant

_____

_____

Name, address, and employer identification number of person receiving certificate

The undersigned gasoline registrant ("Registrant") hereby certifies under penalties of perjury that Registrant is registered by the Internal Revenue Service with registration number _____ and that Registrant's registration has not been revoked or suspended by the Internal Revenue Service.

Registrant understands that the fraudulent use of this certificate may subject Registrant and all parties making such fraudulent use of this certificate to a fine or imprisonment, or both, together with the cost of prosecution.

_____

Signature and date signed

_____

Printed or typed name of person signing

_____

Title of person signing

_____

Name of registrant

_____

Employer identification number

_____

Address of registrant

(3) *Use of Form 637 as a notification certificate prohibited.* A copy of the certificate of registry (Form 637) issued to a registrant by the Internal Revenue Service is not a notification certificate described in paragraph (b)(2) of this section.

(c) *Effective date.* This section is effective January 1, 1993.

§ 48.4081–6 Gasoline tax; gasohol.

(a) *Overview.* This section provides definitions relating to gasohol and rules for determining the applicability of reduced rates of tax on a removal or entry of gasohol or of gasoline used to produce gasohol. Rules are also provided for the imposition of tax on the separation of gasoline from gasohol and the failure to use gasoline (which has been taxed at a reduced rate) to produce gasohol.

(b) *Definitions*—(1) *Alcohol*—(i) *In general; source of the alcohol.* Except as provided in paragraph (b)(1)(ii) of this section, the term "alcohol" means any alcohol that is not a derivative product of petroleum, natural gas, coal, or peat. Thus, the term includes methanol and ethanol that are not derived from petroleum natural gas, coal, or peat. The term also includes alcohol produced either within or outside the United States.

(ii) *Proof and denaturants.* The term "alcohol" does not include alcohol with a proof of less than 190 degrees (determined without regard to added denaturants). If the alcohol added to a fuel/alcohol mixture (the "added alcohol") includes impurities or denaturants, the volume of alcohol in the mixture is determined under the following rules:

(A) The volume of alcohol in the mixture includes the volume of any

impurities (other than added denaturants and any fuel with which the alcohol is mixed) that reduce the purity of the added alcohol to not less than 190 proof (determined without regard to added denaturants).

(B) The volume of alcohol in the mixture includes the volume of any approved denaturants that reduce the purity of the added alcohol, but only to the extent that the volume of the approved denaturants does not exceed 5% of the volume of the added alcohol (including the approved denaturants). If the volume of the approved denaturants exceeds 5% of the volume of the added alcohol, the excess over 5% is considered part of the nonalcohol content of the mixture.

(C) For purposes of this paragraph (b)(1)(ii), "approved denaturants" are any denaturants (including gasoline and nonalcohol fuel denaturants) that reduce the purity of the added alcohol and are added to such alcohol under a formula approved by the Secretary.

(2) *Gasohol*—(i) *In general.* Gasohol is a blend of gasoline and alcohol in a mixture that satisfies the alcohol-content requirement immediately after the mixture is blended. The determination of whether a particular mixture satisfies the alcohol-content requirement is made on a batch-by-batch basis. Except to the extent provided in paragraph (b)(2)(ii) of this section, a batch satisfies the alcohol-content requirement if and only if it contains at least 9.8 percent alcohol by volume, without rounding. A batch of gasohol is a discrete mixture of gasoline and alcohol. If a batch is splash blended, a batch typically corresponds to a gasoline meter delivery ticket and an alcohol meter delivery ticket, each of which shows the number of gallons of liquid delivered into the mixture. In such case, the volume of each component in a batch (without adjustment for temperature) ordinarily is determined by the number of metered gallons shown on the delivery tickets for the gasoline and alcohol delivered. However, if a blended adds metered gallons of gasoline and alcohol to a tank already containing more than a de minimis amount of liquid (other than gasohol), the determination of whether a batch satisfies the alcohol-content requirement will be made by taking into account the amount of alcohol and non-alcohol fuel contained in the liquid already in the tank. Ordinarily, any amount in excess of 0.5 percent of the capacity of the tank will not be considered de minimis.

(ii) *Batches containing less than 10 percent but at least 9.8 percent alcohol.* If a batch of mixture contains less than 10 percent alcohol but at least 9.8 percent alcohol, only a portion of the batch is considered to be gasohol. That portion equals the number of gallons of alcohol in the batch multiplied by 10. Any remaining liquid in the mixture is "excess liquid." If tax was imposed on the excess liquid at the gasohol production rate (as defined in paragraph (e)(1) of this section), the excess liquid in the batch is considered to be gasoline with respect to which there is a failure to blend into gasohol for purposes of paragraph (g) of this section. Excess liquid is considered to be removed before the removal of the gasohol portion.

(iii) *Examples.* The following examples illustrate the provisions of this paragraph (b)(2):

Example 1. A gasohol blender splash blends a batch of gasohol in a tank holding approximately 8000 gallons of mixture. The applicable delivery tickets show that the mixture of blended by first pumping 7200 metered gallons of gasoline into the empty tank, and then pumping 800 metered gallons of alcohol into the tank. Accordingly, the mixture contains 10 percent alcohol (as determined based on the delivery tickets provided to the blender) and qualifies as gasohol.

Example 2. The facts are the same as in *Example 1* except that the applicable delivery tickets show that a mixture is blended by first pumping 7220 metered gallons of gasoline into the empty tank, and then pumping 780 metered gallons of alcohol into the tank. Because the mixture contains only 9.75 percent alcohol (as determined based on the delivery tickets provided to the blender), the mixture does not qualify as gasohol.

Example 3. The facts are the same as in *Example 1* except that the applicable delivery tickets show that a mixture is blended by first pumping 7205 metered gallons of gasoline into the empty tank, and then pumping 795 metered gallons of alcohol into the tank. Because the mixture contains less than 10 percent alcohol, but more than 9.8 percent alcohol, (as determined based on the delivery tickets provided to the blender), only 7950 gallons of the mixture qualify as gasohol. The remaining 50 gallons of the mixture are treated as gasoline with respect to which there was a failure to blend into gasohol for purposes of paragraph (g) of this section.

(3) *Gasohol blender.* The term "gasohol blender" means any person that regularly buys gasoline and alcohol and produces gasohol for use in its trade or business or for resale.

(4) *Registered gasohol blender.* The term "registered gasohol blender" means a person that is registered under section 4101 as a gasohol blender.

(c) *Rate of tax on gasoline removed or entered for gasohol production*—(1) *In general.* The rate of tax imposed on gasoline under §§ 48.4081–2(b) (relating to tax imposed at the terminal rack), 48.4081–3(b)(1)(ii) (relating to tax imposed at the refinery rack), or § 48.4081–3(c)(1)(ii) (relating to tax imposed on nonbulk entries) is the gasohol production tax rate if—

(i) The person liable for tax under § 48.4081–2(c)(1) (the position holder), § 48.4081–3(b)(2) (the refiner), or § 48.4081–3(c)(2) (the enterer) is a gasoline registrant and a registered gasohol blender, and such person produces gasohol with such gasoline within 24 hours after removing or entering the gasoline; or

(ii) The gasoline is sold in connection with the removal or entry, the person liable for tax under § 48.4081–2(c)(1) (the position holder), § 48.4081–3(b)(2) (the refiner), or § 48.4081–3(c)(2) (the enterer) is a gasoline registrant and such person, at the time of the sale—

(A) Has an unexpired certificate (as described in paragraph (c)(2) of this section) from the buyer;

(B) Does not know that any information in the certificate is false; and

(C) Has verified, in accordance with such procedures as the Commissioner may provide by revenue procedure or other administrative pronouncement, that the buyer is a registered gasohol blender.

(2) *Certificate*—(i) *In general.* The certificate to be provided by a registered gasohol blender consists of a statement that is signed under penalties of perjury by a person with authority to bind the registered gasohol blender, is in substantially the same form as the model certificate provided in paragraph (c)(2)(ii) of this section, and contains all information necessary to complete such model certificate. A new certificate must be given if any information in the current certificate changes. The certificate may be included as part of any business records normally used to document a sale. The certificate expires on the earliest of the following dates:

(A) The date one year after the effective date of the certificate (which may be no earlier than the date it is signed).

(B) The date the registered gasohol blender provides a new certificate to the seller.

(C) The date the seller is notified by the Internal Revenue Service or the gasohol blender that the gasohol blender's registration has been revoked or suspended.

(ii) *Model certificate.*

Certificate of Registered Gasohol Blender

(To support sales of gasoline at the gasohol production tax rate under section 4081(c) of the Internal Revenue Code)

Name, address, and employer identification number of seller

The undersigned buyer ("Buyer") hereby certifies the following under penalties of perjury.

Buyer is registered as a gasohol blender with registration number _____. Buyer's registration has not been suspended or revoked by the Internal Revenue Service.

The gasoline bought under this certificate will be used by Buyer to produce gasohol (as defined in § 48.4081–(6)(b) of the Manufacturers and Retailers Excise Tax Regulations) within 24 hours after buying the gasoline.

This certificate applies to the following (complete as applicable):

If this is a single purchase certificate, check here _____ and enter:

1. Account number _____
2. Number of gallons _____

If this is a certificate covering all purchases under a specified account or order number, check here _____ and enter:

1. Effective date _____
2. Expiration date _____

(period not to exceed 1 year after the effective date)

3. Buyer account or order number _____

Buyer will not claim a credit or refund under section 6427(f) of the Internal Revenue Code for any gasoline covered by this certificate.

Buyer agrees to provide seller with a new certificate if any information on this certificate changes.

Buyer understands that any use other than in Buyer's production of gasohol, or resale, of the gasoline covered by this certificate may result in the revocation of Buyer's registration.

Buyer understands that the fraudulent use of this certificate may subject Buyer and all parties making such fraudulent use of this certificate to a fine or imprisonment, or both, together with the costs of prosecution.

_____

Signature and date signed

_____

Printed or typed name of person signing

_____

Title of person signing

_____

Name of Buyer

_____

Employer identification number

_____

Address of Buyer

(iii) *Use of Form 637 as a gasohol blender's certificate prohibited.* A copy of the certificate of registry (Form 637) issued to a gasohol blender by the Internal Revenue Service is not a gasohol blender's certificate described in paragraph (c)(2)(ii) of this section.

(d) *Rate of tax on gasohol removed or entered.* The rate of tax imposed on removals or entries of any gasohol under §§ 48.4081–2(b), 48.4081–3(b)(1)(ii), and 48.4081–3(c)(1)(ii) is the gasohol tax rate. The rate of tax imposed on removals and entries of excess liquid (as described in paragraph (b)(2)(ii) of this section) is the rate of tax applicable to gasoline under section 4081(a).

(e) *Tax rates*—(1) *Gasohol production tax rate.* The gasohol production tax rate is the rate applicable under section 4081(c) to the type of gasohol produced.

(2) *Gasohol tax rate.* The gasohol tax rate is nine-tenths of the gasohol production tax rate applicable to the type of gasohol produced.

(f) *Later blending*—(1) *In general.* A tax is imposed on the sale or removal of a mixture by the blender thereof if—

(i) The blender produced the mixture by blending gasohol and gasoline (other than gasohol) for the purpose of producing fuel that contains a specific percentage of alcohol that is less than 10 percent;

(ii) Tax was imposed with respect to the gasohol at the reduced rate prescribed in paragraph (e) of this section (or tax was imposed with respect to the gasohol at the rate prescribed in section 4081(a) for gasoline and a refund or credit is claimed pursuant to section 6427(f)); and

(iii) Immediately after blending, the mixture contains less than 10 percent alcohol.

(2) *Amount of tax.* The amount of tax imposed under this paragraph (f) is the difference between—

(i) The number of gallons in the mixture times the rate prescribed under section 4081(a) for gasoline; and

(ii) The total amount of tax previously imposed under section 4081(a) (and not returned or credited) with respect to the components of the mixture.

(3) *Liability for tax.* The blender of the mixture is liable for the tax imposed under this paragraph (f).

(4) *Examples.* The provisions of this paragraph (f) are illustrated by the following examples.

Example 1. A retailer advertises fuel containing 5 percent alcohol. To produce the mixture, the retailer buys 5,000 gallons of gasohol on which tax has been imposed at the rate prescribed in paragraph (e) of this section. The blender then blends the gasohol with 5,000 gallons of gasoline. Because the retailer blends the gasoline and gasohol for the purpose of producing a mixture that contains only 5 percent alcohol, this paragraph (f) applies and tax is imposed on the sale or removal of the mixture. Under paragraph (f)(2) of this section, the amount of tax imposed is the difference between (i) 10,000 gallons times the rate prescribed under section 4081(a) for gasoline, and (ii) the total amount of tax previously imposed under section 4081(a) with respect to components of the mixture. The retailer may be entitled to claim a credit under section 40(b) for the amount of alcohol contained in the mixture.

Example 2. A retailer who has been selling gasoline decides to begin selling gasohol. The retailer buys 5,000 gallons of gasohol on which tax has been imposed at the rate prescribed in paragraph (e) of this section. The retailer pumps the gasohol into the gasoline storage tank that had not been emptied prior to the conversion to gasohol sales. Because the retailer did not blend the gasohol bought and the gasoline already in the storage tank for the purpose of producing a mixture containing a specific percentage of alcohol that is less than 10 percent, tax is not imposed under this section even if the resulting mixture contains less than 10 percent alcohol. Similarly, tax would not be imposed under this paragraph (f) if, several months later, the retailer decides to switch back to gasoline sales because of a shortage in the supply of gasohol and pumps gasoline into the storage tank while it still contains some gasohol.

(g) *Later separation and failure to blend*—(1) *Later separation*—(i) *Imposition of tax.* A tax is imposed on the removal or sale of gasoline separated from gasohol with respect to which tax was imposed at a rate described in paragraph (e) of this section or with respect to which a credit or payment was allowed or made by reason of section 6427(f)(1).

(ii) *Liability for tax.* The person that owns the gasohol at the time the gasoline is separated from the gasohol is liable for the tax imposed under paragraph (g)(1)(i) of this section.

(iii) *Rate of tax.* The rate of tax imposed under paragraph (g)(1)(i) of this section is the difference between the rate of tax applicable to gasoline not described in this section and the applicable gasohol production tax rate.

(2) *Failure to blend*—(i) *Imposition of tax.* A tax is imposed on the entry, removal, or sale of gasoline (including excess liquid described in paragraph (b)(2)(ii) of this section) with respect to which tax was imposed at the gasohol production tax rate but which was not blended into gasohol.

(ii) *Liability for tax*—(A) In the case of gasoline with respect to which tax was imposed at the gasohol production rate under paragraph (c)(1)(i) of this section (relating to entries and removals not in connection with sales), the person liable for the tax imposed by paragraph (g)(2)(i) of this section is the person that was liable for tax on the entry or removal.

(B) In the case of gasoline with respect to which tax was imposed at the gasohol production rate under paragraph (c)(1)(ii) of this section (relating to entries and removals in connection with sales), the person that bought the gasoline in connection with

the entry or removal is liable for the tax imposed under paragraph (g)(2)(i) of this section.

(iii) *Rate of tax.* the rate of tax imposed under paragraph (g)(2)(i) of this section is the difference between the rate of tax applicable to gasoline not described in this section and the applicable gasohol production tax rate.

(h) *Effective date.* This section is effective January 1, 1993.

§ 48.4081-7 Gasoline tax; conditions for, and reporting relating to, refunds of gasoline tax under section 4081(e).

(a) *Overview.* This section provides reporting requirements and other conditions that a person paying tax to the government under section 4081 must satisfy to receive a refund (but not a credit) under section 4081(e) with respect to gasoline on which a prior tax was paid to the government under section 4081. No credit against any tax imposed under the Internal Revenue Code is allowed under this section.

(b) *Conditions to allowance of refund.* A claim for refund of tax imposed by section 4081 with respect to gasoline is allowed under section 4081(e) and this section only if—

(1) A tax imposed by section 4081 with respect to the gasoline was paid to the government and not credited or refunded (the "first tax");

(2) After imposition of the first tax, another tax was imposed by section 4081 with respect to the same gasoline and was also paid to the government (the "second tax");

(3) The person that paid the second tax to the government has filed a timely claim for refund that contains the information required under paragraph (d) of this section; and

(4)(i) The person that paid the first tax to the government has included with its return the applicable statements under paragraph (c) of this section; or

(ii) Paragraph (c)(5) of this section applies.

(c) *Reporting requirements*—(1) *Reporting by persons paying first tax.* Except as provided in paragraph (c) (3) or (5) of this section, the person that paid the first tax under § 48.4081-3 (the "first taxpayer") must include with its return of that tax a statement that is in substantially the same form as the model report provided in paragraph (c)(2) of this section and contains all information necessary to complete such model report (the "first taxpayer's report").

(2) *Model first taxpayer's report.*

First Taxpayer's Report

1. _____

First Taxpayer's name, address, and employer identification number

2. _____

Name, address, and employer identification number of the buyer of the gasoline subject to tax

3. _____

Date and location of removal, entry, or sale

4. _____

Volume and type of gasoline removed, entered, or sold

5. Check type of taxable event:

_____ Removal from refinery

_____ Entry into United States

_____ Bulk transfer from terminal by unregistered position holder

_____ Bulk transfer not received at an approved terminal

_____ Sale within the bulk transfer/terminal system

6. _____

Amount of Federal excise tax paid on account of the removal, entry, or sale

7. _____

Location of IRS service center where this report is filed

The undersigned taxpayer (the "Taxpayer") has not received, and will not claim, a credit with respect to, or a refund of, the tax on the gasoline to which this form relates.

Under penalties of perjury, the Taxpayer declares that Taxpayer has examined this statement, including any accompanying schedules and statements, and, to the best of Taxpayer's knowledge and belief, they are true, correct and complete.

_____

Signature and date signed

_____

Printed or typed name of person signing this report

_____

Title

(3) *Optional reporting for certain taxable events.* Paragraph (c)(1) of this section does not apply with respect to a tax imposed under § 48.4081-2 (removal at a terminal rack), § 48.4081-3(b)(1)(ii) (nonbulk entries into the United States), or § 48.4081-3(g) (removals or sales by blenders). However, if the person liable for the tax expects that another tax will be imposed under section 4081 with respect to the gasoline, that person should (but is not required to) include with its return of the tax a statement that is in substantially the same form as the model report provided in paragraph (c)(2) of this section and contains all information necessary to complete such model report.

(4) *Information provided to subsequent owners, etc.*—(i) *By person required to file first taxpayer's report.* A first taxpayer required to file a first taxpayer's report under paragraph (c)(1) of this section must give a copy of the report to—

(A) The person to whom the first taxpayer sells (within the meaning of § 48.4081-1(r)) the gasoline within the bulk transfer/terminal system; or

(B) The owner of the gasoline immediately before the imposition of the first tax, if the first taxpayer is not the owner at that time.

(ii) *By person filing optional first taxpayer's report.* A first taxpayer filing a first taxpayer's report under paragraph (c)(3) of this section should (but is not required to) give a copy of the report to—

(A) The person to whom the first taxpayer sells the gasoline; or

(B) The owner of the gasoline immediately before the imposition of the first tax, if the first taxpayer is not the owner at that time.

(iii) *By person receiving first taxpayer's report.* A person that receives a copy of the first taxpayer's report and subsequently sells (within the meaning of § 48.4081-1(r)) the gasoline within the bulk transfer/terminal system must give the copy and a statement that satisfies the requirements of paragraph (c)(4)(iv) of this section to the buyer. A person that receives a copy of the first taxpayer's report and subsequently sells the gasoline outside the bulk transfer/terminal system should (but is not required to) give the copy and a statement that satisfies the requirements of paragraph (c)(4)(iv) of this section to the buyer, if that person expects that another tax will be imposed under section 4081 with respect to the gasoline.

(iv) *Form of statement*—(A) *In general.* A statement satisfies the requirements of this paragraph (c)(4)(iv) if it is provided at the bottom or on the back of the copy of the first taxpayer's report (or in an attached document). This statement must contain all information necessary to complete the model statement provided in paragraph (c)(4)(iv)(B) of this section but need not be in the same format.

(B) *Model statement describing subsequent sale.*

Statement of Subsequent Seller

1. _____

_____

Name, address, and employer identification number of seller in subsequent sale

2. _____

_____

Name, address, and employer identification number of buyer in subsequent sale

3. _____

Date and location of subsequent sale

4. _____

Volume and type of gasoline sold

The undersigned seller (the "Seller") has received the copy of the first taxpayer's report provided with this statement in

connection with Seller's purchase of the gasoline described in this statement.

Under penalties of perjury, Seller declares that Seller has examined this statement, including any accompanying schedules and statements, and, to the best of Seller's knowledge and belief, they are true, correct and complete.

Signature and date signed

Printed or typed name of person signing this statement

Title

(v) *Sale to multiple buyers.* If the first taxpayer's report relates to gasoline divided among more than one buyer, multiple copies of the first taxpayer's report must be made at the stage that the gasoline is divided and each buyer must be given a copy of the report.

(5) *Exception if the same person incurs two taxes in the same calendar quarter.* A first taxpayer's report under paragraph (c)(1) of this section is not required if the first tax and second tax are incurred by the same person in the same calendar quarter.

(d) *Form and content of refund claim*—(1) *In general.* The following rules apply to claims for refund under section 4081(e):

(i) The claim must be made by the person that paid the second tax to the government.

(ii) The claim must be made on Form 843, Claim for Refund and Request for Abatement (or such other form as the Commissioner may designate), in accordance with the instructions on the form. The form shall be marked "Section 4081(e) Claim" at the top. Section 4081(e) claims shall not be included with a claim for a refund under any other provision of the Internal Revenue Code.

(iii) If the person that paid the second tax did not pay the first tax to the government, the claim must contain all the information described in paragraph (d)(2) of this section.

(iv) If the person that paid the second tax also paid the first tax to the government, the claim must contain all the information described in paragraph (d)(3) of this section.

(2) *Information to be included on claim form by claimant that did not pay the first tax to the government.* If the person that paid the second tax did not pay the first tax to the government, the claim for a refund under section 4081(e) must contain the following information with respect to the gasoline covered by the claim:

(i) Volume and type of gasoline.

(ii) Date on which claimant incurred the tax liability to which this claim relates.

(iii) Amount of tax on this gasoline that claimant paid to the government and a statement that claimant has not included the amount of this tax in the sales price of the gasoline and has not collected that amount from the person that bought the gasoline from claimant.

(iv) Name, address, and employer identification number of the person that paid the first tax to the government.

(v) A copy of the first taxpayer's report (described in paragraph (c) of this section).

(3) *Information to be included on claim form by claimant that paid the first tax to the government.* If the person that paid the second tax also paid the first tax to the government, the claim for a refund under section 4081(e) must contain the following information with respect to the gasoline covered by the claim:

(i) Volume and type of gasoline.

(ii) Date on which claimant incurred liability for the first tax on the gasoline.

(iii) Location of the refinery, terminal, or point of entry where claimant incurred liability for the first tax.

(iv) Amount of the first tax claimant paid to the government.

(v) Date on which claimant incurred tax liability for the second tax on the gasoline.

(vi) Location of the refinery or terminal where claimant incurred liability for the second tax.

(vii) Amount of the second tax claimant paid to the government and a statement that claimant has not included the amount of this tax in the sales price of the gasoline and has not collected that amount from the person that bought the gasoline from claimant.

(e) *Time for filing claim.* A claim for refund under section 4081(e) may be filed any time after the claimant has filed the return of the second tax and before the end of the period prescribed by section 6511 for the filing of a claim for a refund.

(f) *Examples.* The following examples illustrate the provisions of this section.

Example 1. (i) A is a gasoline registrant that owns 10,000 gallons of gasoline, and on April 5, 1993, is transporting the gasoline by barge on a waterway in the United States. That day, A sells the gasoline to B, a person that is not a gasoline registrant. A is liable for tax on the sale under § 48.4081–3(f). A pays this tax to the government and attaches to its return of the gasoline tax for the 2nd quarter of 1993 the first taxpayer's report described in paragraph (c)(2) of this section. A also gives a copy of this report to B.

(ii) On April 9, 1993, B sells the gasoline to C, a gasoline registrant. B also gives C a copy of the first taxpayer's report and the statement of subsequent seller (required under paragraph (c)(4) of this section). On April 14, 1993, the gasoline is removed from a terminal at the rack. C is the position holder of the gasoline at the time of the removal and thus is liable for tax on the removal under § 48.4081–2(c)(1). C pays this tax to the government.

(iii) After C has filed a return of the second tax and before the end of the period prescribed by section 6511 for filing a claim for a refund, C files a claim for a refund of the second tax. The claim is in the form prescribed in paragraph (d)(2) of this section. C includes with its claim a copy of the first taxpayer's report and statement of subsequent seller. Because the conditions to allowance of a refund under paragraph (b) of this section have been met, C is allowed a refund of the second tax.

Example 2. The facts are the same as in *Example 1* except that A does not pay the tax to the government. Because the first tax was not paid to the government as required by paragraph (b)(1) of this section, the conditions to allowance of a refund under paragraph (b) of this section have not been met. Therefore, C is not allowed a refund of the second tax.

(g) *Effective date*—(1) *In general.* This section is effective in the case of gasoline with respect to which the first tax is imposed after December 31, 1992.

(2) *Cross reference.* For rules applicable if the first tax is imposed before January 1, 1993, see § 48.4081–9(e).

§ 48.4081–8 Gasoline tax; measurement.

(a) *In general.* For purposes of the tax imposed by section 4081, gallons of gasoline may be measured on the basis of—

(1) Actual volumetric gallons,

(2) Gallons adjusted to 60 degrees Fahrenheit; or

(3) Any other temperature adjustment method approved by the Commissioner.

(b) *Effective Date.* This section is effective January 1, 1993.

§ 48.4081–9 Gasoline tax; rules applicable after June 30, 1991, and before January 1, 1993.

(a) *Overview.* This section provides transitional rules for applying the amendments made to section 4081 by the Revenue Reconciliation Act of 1990 during the period beginning July 1, 1991 (the effective date of those amendments) and ending December 31, 1992 (the last day before the effective date of §§ 48.4081–1 through 48.4081–8.

(b) *Imposition of tax.* For the imposition of tax, see sections 4081 and 4082.

(c) *Liability for tax*—(1) *Primary liability.* The owner of the gasoline immediately before the taxable event is liable for the tax imposed under sections 4081 and 4082.

(2) *Secondary liability.* The terminal operator is secondarily liable for tax imposed under section 4081(a)(1)(ii) if it permits an unregistered owner of gasoline to remove the gasoline at its terminal rack. However, the terminal operator may rely on the rules of Notice 87–83, 1987–2 C.B. 393, to avoid such liability.

(d) *Reliance on previously issued guidance.* Taxpayers may rely on guidance previously published by the Internal Revenue Service under sections 4081 and 4082 to the extent the guidance is not inconsistent with sections 4081 and 4082 (as amended by the Revenue Reconciliation Act of 1990). The relevant guidance includes Notice 87–83, 1987–2 C.B. 393, Notice 88–16, 1988–1 C.B. 482, Notice 88–109, 1988–2 C.B. 446, Notice 89–101, 1989–2 C.B. 435, and Rev. Rul. 88–70, 1988–2 C.B. 338

(e) *Conditions for refunds of gasoline tax under section 4081(e)*—(1) *Conditions to allowance of refund.* A claim for refund of tax imposed by section 4081 with respect to gasoline is allowed under section 4081(e) and this section only if—

(i) A tax imposed by section 4081 with respect to the gasoline was paid to the government and not credited or refunded (the "first tax");

(ii) After imposition of the first tax, another tax was imposed by section 4081 with respect to the same gasoline and was also paid to the government (the "second tax"); and

(iii) The person that paid the second tax to the government has filed a timely claim for refund that contains the information required under paragraph (d)(2) of this section.

(2) *Form and content of refund claim.* The claim for refund under section 4081(e) shall be made by the person that paid the second tax. The claim must be made on Form 843, Claim for Refund and Request for Abatement (or such other form as the Commissioner may designate), in accordance with the instructions on the form. Each claim for a refund under this section must contain the following information with respect to the gasoline covered by the claim:

(i) The volume and type of gasoline.

(ii) The name, address, employer identification number, and registration number of the first taxpayer.

(iii) The date on which the claimant bought the gasoline.

(iv) The location at which the claimant bought the gasoline.

(v) The date on which the claimant incurred the tax liability to which the claim relates.

(3) *Time for filing claim.* A claim for refund under section 4081(e) may be filed any time after the claimant has filed the return of the second tax and before the end of the period prescribed by section 6511 for the filing of a claim for a refund.

(f) *Effective date.* This section is effective after June 30, 1991, and before January 1, 1993, except that paragraph (e) of this section applies to any refund relating to a first tax imposed before January 1, 1993.

Par. 3. The authority citation for part 602 continues to read as follows:

Authority: 26 CFR 7805.

Par. 4. Section 602.101(c) is amended by removing the entries in the table for §§ 48.4081–1, 48.4081–2, 48.4082–1, 48.4083–1, 48.4083–2, and 48.4084–1 and adding the following entries in the table to read as follows:

§ 602.101 OMB control numbers.

* * * * *

(c) * * *

CFR part or section where identified and described	Current OMB control number
* * * * *	
48.4081–2(c)(3)	1545–1270
48.4081–3(d)(2)(iii)	1545–1270
48.4081–3(e)(2)(ii)	1545–1270
48.4081–3(f)(2)(ii)	1545–1270
48.4081–4(b)(2)(ii)	1545–1270
48.4081–4(b)(3)(i)	1545–1270
48.4081–4(c)	1545–1270
48.4081–6(c)(1)(ii)	1545–1270
48.4081–7	1545–1270
48.4081–9	1545–1270
* * * * *	

Shirley D. Peterson,

Commissioner of Internal Revenue.

Approved:

Fred T. Goldberg, Jr.,

Assistant Secretary of the Treasury.

[FR Doc. 92–16561 Filed 7–21–92; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Part 0

[AG Order No. 1606–92]

Establishment of the Office of International Programs

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This order will amend the Department of Justice organization regulations to replace the Office of International Affairs with the Office of International Programs. Establishment of this new Office will increase efficiency within the Department. This order will provide the public with an accessible list of the duties of the Director of the Office of International Programs. This order will amend the Code of Federal Regulations in order to reflect accurately the Department's internal management structure.

EFFECTIVE DATE: July 22, 1992.

FOR FURTHER INFORMATION CONTACT: Drew C. Arena, Director, Office of International Programs, U.S. Department of Justice, Washington, DC 20530, telephone (202) 514–8672.

SUPPLEMENTARY INFORMATION: This order pertains to a matter of internal Department management. 5 U.S.C. 553(b)(A). It does not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). It is not a major rule within the meaning of or subject to Executive Order 12291.

List of Subjects in 28 CFR Part 0

Authority delegations (Government agencies), Government employees, Organization and functions (Government agencies), Whistleblowing.

Accordingly, by virtue of the authority vested in me as Attorney General by 5 U.S.C. 301 and 28 U.S.C. 509, 510, part 0 of title 28 of the Code of Federal Regulations is amended as follows:

1. The authority citation for part 0 continues to read as follows:

Authority: 5 U.S.C 301; 28 U.S.C. 509, 510, 515–519.

§ 0.1 [Amended]

2. Part 0, subpart A, § 0.1 is amended by removing from the list under "Offices" the title "Office of International Affairs" and by adding in its place the title "Office of International Programs".

3. Subpart E–1 of part 0 is revised to read as follows:

Subpart E–1—Office of International Programs

§ 0.26 Organization.

There shall be within the Office of the Deputy Attorney General an Office of International Programs.

(a) *Director.* The Office of International Programs shall be headed by a Director appointed by the Attorney General.

(b) *Functions.* The Director of the Office of International Programs shall discharge the following duties:

(1) Coordinate all proposals for the Department of Justice, or Department of Justice personnel, to provide foreign countries with training or technical assistance in the fields of law enforcement, administration of justice, legislation, and economic reform and

democratic institution-building initiatives.

(2) Assist the Deputy Attorney General in coordinating the activities of the International Criminal Investigative Training Assistance Program and in coordinating responses to requests for international training and technical assistance submitted to the INTERPOL–U.S. National Central Bureau and other Department of Justice units.

(3) Serve as the focal point, on behalf of the Deputy Attorney General, for administrative matters involving international activities, including overseas staffing, of all Department of Justice units.

(4) Coordinate arrangements and preparations for contacts by the Attorney General and Deputy Attorney General with officials of foreign governments, foreign non-governmental organizations, and international organizations.

(5) As required, advise the Deputy Attorney General on matters relating to non-operational foreign travel by Department of Justice personnel.

(6) Serve as a primary liaison with the Department of State, with other appropriate federal, state and local agencies, and with appropriate non-governmental institutions, regarding training and technical assistance to foreign countries in the fields of law enforcement, administration of justice, legislation, and economic reform and democratic institution-building initiatives.

(7) Review and coordinate all planned and ongoing training and technical assistance activities in the fields of law enforcement, administration of justice, legislation, and economic reform and democratic institution-building initiatives by Department of Justice personnel in foreign countries.

(8) As needed, facilitate logistical arrangements for Department of Justice personnel to engage in approved training and technical assistance activities in the fields of law enforcement, administration of justice, legislation, and economic reform and democratic institution-building initiatives in foreign countries.

(9) Coordinate Department of Justice views on proposals for entities outside the Department, including international organizations, to conduct training and technical assistance activities in the fields of law enforcement, administration of justice, legislation, and economic reform and democratic institution-building initiatives in or for foreign countries.

(10) Serve as a focal point, on behalf of the Deputy Attorney General, for resolution, within the Department of Justice, of issues regarding international policy.

(11) Coordinate, on behalf of the Deputy Attorney General, legislation relevant to Department of Justice training and technical assistance activities in or for foreign countries.

(12) Perform such other duties and functions as may be specially assigned by the Deputy Attorney General.

(c) *Relationship with other Departmental units.* The Office of International Programs shall:

(1) Maintain continual liaison with interested components of the Department on international matters.

(2) Develop and administer effective mechanisms to ensure thorough consideration, by interested components of the Department, of all proposals for international training and technical assistance by Department personnel.

(d) *Redelegation of authority.* The Director is authorized to redelegate to any subordinate member of the Office of International Programs any of the authority, functions or duties vested in the Director by this subpart.

Dated: July 10, 1992.

George J. Terwilliger III,

Acting Attorney General.

[FR Doc. 92–17085 Filed 7–21–92; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 1

[Docket No. 910246–2140]

RIN 0651–AA43

Changes in Patent and Trademark Assignment Practice

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Final Rule; correction.

SUMMARY: The Patent and Trademark Office (Office) amended the rules of practice regarding assignments in patent and trademark cases to improve and clarify the rules, to codify changes in practice and to consolidate the rules into a new Part 3 directed to assignments. In the final assignment rules a fee change promulgated in January 1992 was inadvertently omitted from the § 1.17(i)(1) listing.

EFFECTIVE DATE: September 4, 1992.

FOR FURTHER INFORMATION CONTACT: Jeffrey V. Nase by telephone at (703) 305–9282 or by mail marked to his attention and addressed to Commissioner of Patents and Trademarks, Box DAC, Washington, DC 20231.

SUPPLEMENTARY INFORMATION: The amended assignment rules first appeared in a notice of proposed rulemaking published in the **Federal Register** on May 10, 1991, at 56 FR 21641, and the Patent and Trademark Office "Official Gazette" of June 4, 1991, at 1127 O.G. 8–16. The final rules appeared in the **Federal Register** on July 6, 1992, at 57 FR 29634. Between the time the proposed and final rules were published, 37 CFR § 1.97(d) was amended, effective March 16, 1992, by a final rule which appeared in the **Federal Register** of January 17, 1992, 57 FR 2021, relating to the duty of disclosure. The amendment provided for a new petition fee which was referenced in 37 CFR § 1.17, patent application processing fees. The reproduction of § 1.17 in the final assignment rule package neglected to add the reference to the new petition fee under § 1.97(d).

Section 1.17(i)(1) is reproduced in its entirety to include the reference to § 1.97(d) which was inadvertently omitted. The amount of the fee for considering an information disclosure statement is not affected by this rule change.

List of Subjects in 37 CFR Part 1

Administrative practice and procedure, Courts, Freedom of information, Inventions and patents.

For the reasons set out in the preamble and pursuant to the authority contained in 35 U.S.C. 6, part 1 of title 37 of the Code of Federal Regulations has been amended as set forth below.

PART 1—RULES OF PRACTICE IN PATENT CASES

1. The authority citation for 37 CFR part 1 would continue to read as follows:

Authority: 35 U.S.C. 6, unless otherwise noted.

2. Section 1.17 is amended by revising paragraph (i)(1) to read as follows:

§ 1.17 Patent application processing fees.

* * * * *

(i)(1) For filing a petition to the Commissioner under a section of this part listed below which refers to this paragraph—$130.00.

§ 1.12—for access to an assignment record

§ 1.14—for access to an application

§ 1.53—to accord a filing date

§ 1.55—for entry of late priority papers

§ 1.60—to accord a filing date

§ 1.62—to accord a filing date
§ 1.97(d)—to consider an information disclosure statement
§ 1.103—to suspend action in application
§ 1.177—for divisional reissues to issue separately
§ 1.312—for amendment after payment of issue fee
§ 1.313—to withdraw an application from issue
§ 1.314—to defer issuance of a patent
§ 1.666(b)—for access to interference settlement agreement
§ 3.81—for patent to issue to assignee, assignment submitted after payment of the issue fee

* * * * *

Dated: July 17, 1992.

Douglas B. Comer,

Acting Assistant Secretary and Acting Commissioner of Patents and Trademarks.

[FR Doc. 92-17298 Filed 7-21-92; 8:45 am]

BILLING CODE 3510-16-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 180 and 185

[PP 0E3902 and FAP 0H5599/R1156; FRL-4073-8]

RIN 2070-AB78

Pesticide Tolerances for Lambda-Cyhalothrin

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes tolerances for the insecticide lambda-cyhalothrin in or on the food commodity dried hops and increases tolerances in or on the raw agricultural commodities fat of cattle, goats, horses, and sheep and milk. These regulations to establish and increase maximum permissible levels for residues of the insecticide were requested pursuant to petitions submitted by ICI Agricultural Products.

EFFECTIVE DATE: This regulation becomes effective July 22, 1992.

ADDRESSES: Written objections, identified by the document control number, [PP 0E3902 and FAP 0H5599/R1156], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: George T. LaRocca, Product Manager (PM) 15, (H7505C), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 202, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-305-6100.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 3, 1992 (57 FR 23366), EPA issued a proposed rule that gave notice that ICI Agricultural Products, Wilmington, DE 19897, had submitted pesticide petition (PP) 0E3902 proposing to increase a tolerance under section 408(e) of the Federal Food, Drug, and Cosmetic Act (FFDCA) (21 U.S.C. 346a(e)) in or on the raw agricultural commodities fat of cattle, goats, horses, and sheep at 0.02 part per million (ppm) and milk fat at 0.25, and submitted food additive petition (FAP) 0H5599 to establish a food additive regulation under section 409(b) of the FFDCA (21 U.S.C. 348(b)) for the insecticide lambda-cyhalothrin, [1 α (S*), 3α(Z)]-(±)-cyano(3-phenoxyphenyl)methyl 3-(2-chloro-3,3,3-trifluoro-1-propenyl)-2,2-dimethylcyclopropanecarboxylate, in or on the food commodity dried hops imported from Germany at 10.0 ppm.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted in the petition and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerances will protect the public health. Therefore, the tolerances are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above (40 CFR 178.20). The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Parts 180 and 185

Administrative practice and procedure, agricultural commodities, food additives, pesticides and pests, reporting and recordkeeping requirements.

Dated: July 7, 1992.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, chapter I of title 40 of the Code of Federal Regulations is amended as follows:

PART 180—[AMENDED]

1. In part 180:

a. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

b. In § 180.438, by revising the section heading and the commodities fat of cattle, goats, horses and sheep and milk in the table in paragraph (a) to read as follows:

§ 180.438 [1 α (S*),3α(Z)]-(±)-cyano(3-phenoxyphenyl)methyl 3-(2-chloro-3,3,3-trifluoro-1-propenyl)-2,2-dimethylcyclopropanecarboxylate; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * * * *	
Cattle, fat	0.02
* * * * * * *	
Goats, fat	0.02
* * * * * * *	
Horses, fat	0.02
* * * * * * *	
Milkfat (reflecting 0.01 ppm in whole milk)	0.25

Commodity	Parts per million
* * * * * * *	
Sheep, fat	0.02
* * * * * * *	

PART 185—[AMENDED]

2. In part 185:

a. The authority citation for part 185 continues to read as follows:

Authority: 21 U.S.C. 346.

b. In § 185.1310 by adding new paragraph (b), to read as follows:

§ 185.1310 [1 α (S*),3α(Z)]-(±)-cyano(3-phenoxyphenyl)methyl 3-(2-chloro-3,3,3-trifluoro-1-propenyl)-2,2-dimethylcyclopropanecarboxylate.

* * * * *

(b) A food additive tolerance is established for residues of the insecticide [1 α (S*),3α(Z)]-(±)-cyano-(3-phenoxylphenyl)methyl 3-(2-chloro-3,3,3-trifluoro-1-propenyl)-2,2-dimethylcyclopropanecarboxylate as follows:

Commodity	Parts per million
Hops, dried	10.0

[FR Doc. 92-17137 Filed 7-21-92; 8:45 am]
BILLING CODE 6560-50-F

40 CFR Part 721

[OPPTS-50591C; FRL-4009-6]
RIN 2070-AB27

Ethane, 2-chloro-1,1,1,2-tetrafluoro-; Significant New Use Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is promulgating a significant new use rule (SNUR) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for the chemical substance ethane, 2-chloro-1,1,1,2-tetrafluoro-, which is the subject of premanufacture notice (PMN) P-88-1763, and which is subject to a TSCA section 5(e) consent order issued by EPA. This rule requires certain persons who intend to manufacture, import, or process this substance for a significant new use to notify EPA at least 90 days before commencing any manufacturing, importing, or processing activities for a use designated by this SNUR as a significant new use. The required notice will provide EPA with the opportunity to evaluate the intended use and, if necessary, to prohibit or limit that activity before it can occur.

DATES: This rule shall be promulgated for purposes of judicial review at 1 p.m. Eastern Standard Time on August 5, 1992. The effective date of this rule is September 21, 1992.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (TS-799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, rm. EB-543-B, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554-1404, TDD: (202) 554-0551.

SUPPLEMENTARY INFORMATION: This SNUR requires persons to notify EPA at least 90 days before commencing the manufacture, import, or processing of P-88-1763 for the significant new uses designated herein. The required notice will provide EPA with information with which to evaluate an intended use and associated activities.

I. Authority

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a "significant new use." EPA must make this determination by rule after considering all relevant factors, including those listed in section 5(a)(2). Once EPA determines that a use of a chemical substance is a significant new use, section 5(a)(1)(B) of TSCA requires persons to submit a notice to EPA at least 90 days before they manufacture, import, or process the chemical substance for that use. Section 26(c) of TSCA authorizes EPA to take action under section 5(a)(2) with respect to a category of chemical substances.

Persons subject to this SNUR must comply with the same notice requirements and EPA regulatory procedures as submitters of premanufacture notices under section 5(a)(1) of TSCA. In particular, these requirements include the information submission requirements of section 5(b) and (d)(1), the exemptions authorized by section 5(h)(1), (h)(2), (h)(3), and (h)(5), and the regulations at 40 CFR part 720. Once EPA receives a significant new use notice (SNUN), EPA may take regulatory action under section 5(e), 5(f), 6, or 7 to control the activities described in that notice. If EPA does not take action, section 5(g) of TSCA requires EPA to explain in the **Federal Register** its reasons for not taking action.

Persons who intend to export a substance identified in a proposed or final SNUR are subject to the export notification provisions of TSCA section 12(b). The regulations that interpret section 12(b) appear at 40 CFR Part 707.

II. Applicability of General Provisions

General regulatory provisions applicable to SNURs are codified at 40 CFR part 721, subpart A. On July 27, 1988 (53 FR 28354) and July 27, 1989 (54 FR 31298), EPA promulgated amendments to the general provisions in subpart A which apply to this SNUR. In the **Federal Register** of August 17, 1988 (53 FR 31252), EPA promulgated a "User Fee Rule" (40 CFR Part 700) under the authority of TSCA section 26(b). Provisions requiring persons submitting significant new use notices to submit certain fees to EPA are discussed in detail in that **Federal Register** document. Interested persons should refer to these documents for further information.

III. Background

A. Proposed Rule

The chemical substance, ethane, 2-chloro-1,1,1,2-tetrafluoro-, was the subject of PMN P-88-1763 and a TSCA section 5(e) consent order issued by EPA. The order contained provisions requiring labeling, material safety data sheets (MSDSs), and worker training, prohibiting use of the substance in structural insulation foam board, limiting distribution of the substance to persons who agree to follow requirements specified in the section 5(e) consent order, submitting certain toxicity testing by the production limits or dates specified in the section 5(e) consent order, and maintaining certain records. EPA published a direct final SNUR for the substance in the **Federal Register** of April 25, 1991, at 56 FR 19229. The section number given for the substance in the proposed rule, § 721.1006, has been redesignated in the final rule as § 721.3180. EPA received a notice of intent to submit adverse comments during the 30 days following publication. Therefore, as required by § 721.160, the direct final SNUR for P-88-1763 was withdrawn in the **Federal Register** of September 20, 1991, at 56 FR 47677 and a proposed SNUR published in the **Federal Register** of September 20, 1991, at 56 FR 47714. EPA received comments from one person, the original PMN submitter.

The proposed SNUR for P-88-1763 designated as significant new uses, based on the provisions of the section 5(e) order for P-88-1763:

(1) Any use without establishing a hazard communication program in the workplace including specific worker training, specific label and MSDS language, and warning statements.

(2) Any use where the aggregate manufacture and importation production limit as defined in the consent order for P–88–1763 is exceeded.

(3) Use as a blowing agent in the manufacture of structural insulation foams for commercial or consumer purposes.

In addition, the proposed SNUR contained recordkeeping requirements for documenting manufacture or import volumes, purchases, customer sales, notification of customers of the existence of the SNUR, establishment/implementation of the hazard communication program including copies of the MSDS and label, and compliance with use restriction of P–88–1763 as a blowing agent for structural insulation foams. Additionally, under § 721.5(a)(2)(i) every manufacturer, importer, and processor subject to a SNUR for a particular substance is required to notify each customer in writing of the specific SNUR requirements. Under § 721.5(d), manufacturers, processors, and importers of a substance subject to a SNUR are also required to take specified actions if they have knowledge that recipients of that substance are engaging in a significant new use. These actions could include stopping sales, notices to the recipient and EPA, and, if necessary, a SNUN on behalf of the recipient.

B. Final Rule

The commenter provided comments on a number of the proposed rule provisions. The commenter interprets TSCA section 9(c) to provide that EPA's authority to promulgate the comprehensive workplace and labeling program in § 721.72(a) through (g), referenced in § 721.1006(a)(2)(i) (now § 721.3180(a)(2)(i)) is preempted by the Occupational Safety Health Administration (OSHA) Hazard Communication Standard, 29 CFR 1910.1200. EPA disagrees. Section 9(c) of TSCA addresses section 4(b)(1) of the Occupational Safety and Health Act (OSHA). Section 4(b)(1) prohibits OSHA standards governing working conditions with respect to which other Federal agencies "exercise statutory authority to prescribe or enforce standards or regulations affecting occupational safety and health." TSCA section 9(c) provides only that TSCA requirements do not preempt OSHA standards. This means that neither statute preempts the other.

For purposes of the OSHA Hazard Communication Standard, a substance generally is considered a health hazard requiring warnings and notice of protective measures only if certain toxicity data requirements are met. In contrast, regulation under section 5(e) of TSCA is designed to prevent unreasonable risks when there is insufficient data to evaluate those risks. It is entirely within EPA's jurisdiction to regulate a new chemical substance or the new uses of a substance under section 5(e) of TSCA to prevent such risks even in cases where the substance would not qualify as a hazardous chemical and would not be subject to the OSHA Hazard Communication Standard. In the case of P–88–1763 there are still insufficient data to evaluate its potential cancer and developmental toxicity risks. EPA has made the finding under section 5(e) of TSCA that, due to potential cancer and developmental toxicity concerns, P–88–1763 may present an unreasonable risk of injury to human health.

The commenter also stated that under § 721.72(a) through (g), referenced in § 721.1006(a)(2)(i) (now § 721.3180(a)(2)(i)), EPA had not complied with section 9(d) of TSCA. Section 9(d) of TSCA states that EPA must consult with other agencies to achieve maximum enforcement of TSCA while imposing the least burdensome requirements. The SNUR for P–88–1763 contains provisions for hazard communication found in EPA's general provisions for SNURs under § 721.72 promulgated on July 27, 1989 (54 FR 31298). After consultation with OSHA, EPA modeled these provisions after OSHA's Hazard Communication Standard so that complying with similar regulations under TSCA and OSHA would not be burdensome or duplicative. Instances such as P–88–1763 should require only one hazard communication program with labels and MSDS's to comply with provisions of both acts.

The commenter also stated that EPA had made the finding that P–88–1763 presents a physical or health hazard as those terms are defined in the OSHA Hazard Communication Standard. As stated above EPA has made a finding under section 5(e) of TSCA that the substance may present a risk. Whether the substance is a hazardous chemical for OSHA purposes is determined by the standards of the OSHA and the accompanying regulations. Under the OSHA Hazard Communication Standard, manufacturers are responsible for determining whether they have a hazardous chemical and complying with applicable requirements.

The commenter noted that the proposed concentration of 0.1 percent as the trigger for the provision regarding low concentrations in mixtures in § 721.72(e) referenced in § 721.1006(a)(2)(i) (now § 721.3180(a)(2)(i)), was different from the 1.0 percent found in the section 5(e) order (in the section 5(e) order, the concentration is set at 1.0 percent and drops to 0.1 percent if toxicity testing implicates P–88–1783 as a carcinogen). EPA agrees that both the section 5(e) order and the SNUR should agree and has revised the final SNUR to provide that the level is set at 1.0 percent but drops to 0.1 percent if the employer becomes aware of new information that requires a cancer hazard warning on the MSDS. However, a change in concentration will not necessitate further notification in the Federal Register.

The commenter requested that EPA clarify the meaning of aggregate production volume in § 721.80(q) referenced in § 721.1006(a)(2)(ii) (now § 721.3180(a)(2)(ii)) and explain how EPA intends to apply the two production limits found in the order to persons subject to the SNUR. For purposes of this SNUR, aggregate production volume means total production volume of that substance for each individual manufacturer or importer. Each manufacturer or importer subject to the SNUR may produce up to the lower production limit. Before exceeding that limit, the manufacturer/importer must submit a significant new use notice to EPA. EPA anticipates addressing both production volume limits upon receiving significant new use notification. Accordingly, notice will not be required prior to exceeding the second production limit.

The commenter noted that § 721.80(q) as referenced in § 721.1006(a)(2)(ii) (now § 721.3180(a)(2)(ii)) did not designate manufacture or import without conducting toxicity testing beyond a certain production limit as a significant new use. The commenter stated that this was a major difference between the section 5(e) order and the SNUR because the section 5(e) order required the submitter to complete certain studies before exceeding the production volume limit. The commenter stated that this situation imposed costs on the first manufacturer/importer that are not imposed on a second manufacturer/importer and could unduly create barriers to innovation contrary to TSCA section 2(b)(3) policy. The commenter also suggested alternative significant new uses so that other manufacturers/processors would share test costs as a condition of manufacturing/importing any quantity of P–88–1763.

The Agency believes that no change to the proposed provision of the SNUR for production limits is necessary. The

proposed SNUR designated as a significant new use to exceed the production limit in the section 5(e) order for P–88–1763. Before a second manufacturer/importer may exceed the production limit it must give 90 days notice to EPA of the significant new use. EPA will evaluate the significant new use notice and generally will not allow a second manufacturer/importer to exceed the production limit unless the testing required in the section 5(e) order has been completed or is in progress. EPA will coordinate with multiple manufacturers/importers of P–88–1763 to the extent possible to ensure that only one set of required tests is conducted and that the parties will have an opportunity to share costs. The significant new use designation at § 721.80(q) and EPA's response to a significant new use notice for that designation as described above are similar to the requirements of the section 5(e) consent order and impose similar cost of testing on any manufacturer, processor, or importer who files a significant new use notice. In addition, designating completion of toxicity testing as a significant new use does not address any of the factors found in section 5(a)(2). Therefore, EPA has decided to continue to designate the production limit in the SNUR as the best approximation of the terms of the section 5(e) order.

The proposed SNUR at § 721.80 as referenced in § 721.1006(a)(2)(ii) (now § 721.3180(a)(2)(ii)) designates as a significant new use the use of P–88–1763 as a blowing agent in the manufacture of structural insulation foams for commercial or consumer purposes. The commenter recommended that the Agency also designate the sale of P–88–1763 for use as a blowing agent in the manufacture of structural insulation foams for commercial or consumer purposes and the importation of consumer/commercial structural insulation foams that were produced abroad using P–88–1763 as a significant new use.

The commenter's concern regarding the sale of P–88–1763 is addressed under the general SNUR provisions in § 721.5(d)(1). In the final SNUR it is a significant new use to use P–88–1763 as a blowing agent in the manufacture of structural insulation foams for commercial or consumer purposes. According to § 721.5(d)(1), any manufacturer, importer, or processor who has knowledge that a recipient of P–88–1763 is using it as a blowing agent in the manufacture of structural insulation foams for commercial or consumer purposes, must cease distribution of P–88–1763 to that person and submit a significant new use notice unless certain other conditions are met. In effect, manufacturers, importers, and processors may not knowingly sell P–88–1763 for a designated significant new use.

EPA agrees with the commenter's position that persons who import for consumer or commercial purposes structural insulation foams that were produced abroad using P–88–1763 should be subject to the requirements of this SNUR. In the section 5(e) order for P–88–1763, EPA found that consumers exposed to P–88–1763 from such insulation foams may be subject to inhalation exposures of up to 1,300 mg per year. Based on this finding, EPA determined that the substance may present an unreasonable health risk. However, consumers who are subject to inhalation exposures from structural insulation foams would be subject to the same health risks whether the foams are manufactured domestically or imported. Therefore, as indicated by the commenter, the applicability of this SNUR should be consistent with respect to commercial or consumer uses of domestically manufactured and imported structural insulation foams. To assure that EPA will receive notice from importers as well as manufacturers and processors, the final rule designates as a significant new use "use for commercial or consumer purposes structural insulation foams made using this substance." Persons who import the substance for such a use would be required to submit a notice under the final rule. Accordingly, the exemption set out in § 721.45(f) for importing articles made from a substance subject to a SNUR will not apply to import of structural insulation foams used for commercial or consumer purposes made from P–88–1763. This should not change the reporting burden for domestic producers of foams using P–88–1763 because they would be required to report if they use the substance to produce foams and EPA would review their use before any further use of the actual foams.

The commenter cited two instances under § 721.72(g) as referenced in § 721.1006(a)(2)(i) (now § 721.3180(a)(2)(i)) where a designated new use under the hazard communication provision in the SNUR differed from the requirement in the section 5(e) consent order. The commenter states that the section 5(e) consent order required MSDS language that stated "Intentional misuse or deliberate inhalation may cause death without warning" while the SNUR designated MSDS language that stated "Intentional misuse can be fatal." The section 5(e) consent order also required a statement on the label "Before using read the HCFC 124 MSDS" while the SNUR designated the statement "See MSDS for details." The commenter stated that EPA should have the same requirements for both the order and the SNUR.

In the case of the cited MSDS language EPA has the same requirements for both the order and the SNUR. EPA's approval of the alternative MSDS language "intentional misuse or deliberate inhalation may cause death without warning" is contained in a letter to the commenter/PMN submitter separate from the section 5(e) consent order. The section 5(e) consent order still requires the MSDS phrase "intentional misuse can be fatal." In the letter, EPA merely approved additions to the MSDS language. The label statement noted by the commenter as required in the section 5(e) consent order was specifically requested by the commenter rather than EPA's standard label language, "See MSDS for details." However, the final rule designates only the standard language which allows some flexibility for persons who may use a different trade name for the PMN substance. The commenter's customers may use the language required in the order knowing that it satisfies their requirements under the SNUR.

The commenter requested clarification or withdrawal of several significant new use designations relating to recordkeeping, notification of customers, and definition of processing. The commenter specifically asked EPA to verify if the exemption at § 721.45(i), which states that anyone subject to a section 5(e) consent order for a substance is exempt from conflicting requirements from the SNUR for that substance, also applies to recordkeeping. EPA agrees that persons who are exempt from SNUR requirements for a substance because they are subject to a section 5(e) consent order for that substance, are also exempt from recordkeeping requirements for those SNUR requirements for that substance.

The commenter also specifically requested EPA to clarify if the recordkeeping requirements at § 721.125(c) apply to intracompany transfers from the site of manufacture, import, or processing to a storage facility/warehouse. The requirement at § 721.125(c) is for manufacturers, importers, and processors, of a substance to document the name and address of the persons to whom the

manufacturer, importer, or processor directly sells or transfers the substance, date of sale or transfer, and quantity sold or transferred. Section 721.125(c) does not require manufacturers, importers, or processors to document intracompany transfers for storage purposes. However, intracompany transfers for further processing or use are to be documented.

The commenter claimed that the recordkeeping requirements under § 721.125 were confusing and potentially very burdensome. The commenter asked EPA to clarify if its listing of recordkeeping requirements in its comments was accurate. The confusion arises from the uncertainty of what types of processing activities trigger the requirement to submit a notice under this SNUR and what records are to be kept by each manufacturer, importer, and processor. The burden is a result of the potentially large number of processors who might have to keep such records. The commenter stated that such a burden may adversely impact the commercial utilization of P–88–1763 as a chlorofluorocarbon alternative. The submitter's listing of records required under § 721.125 is accurate. Based on that listing EPA expects manufacturers, importers, and processors will understand specific recordkeeping requirements. However, EPA agrees that, absent a clear statement of applicability, the potentially complex distribution pattern, and large number of processors for P–88–1763 could result in unnecessary confusion and regulatory burden. EPA addresses these issues in its response to the comment described in the next paragraph.

The commenter stated that EPA should define processing or processors of P–88–1763, to clarify who would be subject to the requirements for notification of customers of hazard communication requirements, notification of customers of the existence of the SNUR for P–88–1763, and records documenting such notification. The commenter asked EPA to clarify if the listing of potential processors in its comments would be considered processors under the rule. The commenter also restated that the uncertainty and burden of a SNUR applying to so many potential processors could adversely impact the commercial utilization of P–88–1763 as a chlorofluorocarbon alternative. EPA agrees that a better description of who is subject to the SNUR for P–88–1763 would reduce uncertainty and the regulatory burden. Therefore, the final rule specifically describes processing activities that would not constitute new uses under this SNUR. First it should be noted that under § 721.45(f) any person who imports or processes a substance subject to a SNUR is exempt from that SNUR if the substance is incorporated into an article before that person receives it unless EPA identifies such articles as subject to a specific SNUR. Therefore, once P–88–1763 is incorporated into appliances, air conditioners, industrial equipment, or any other articles (except the foam insulation described earlier) the SNUR no longer applies to persons who import or process such articles.

In addition, EPA has added language to the final rule to indicate that this SNUR is not applicable to the following categories of processors:

> Processors of this substance are not subject to this section if they only service, repair, maintain, or sell products that contain the substance.

This statement defines the applicability of this SNUR and is not intended to affect the statutory or regulatory definition of "processor" for other purposes.

The commenter claimed that EPA had not articulated its finding that manufacture, import, or processing of P–88–1763 may constitute a significant new use under section 5(a)(2) of TSCA and in particular had not provided any explanation of TSCA section 5(a)(2) factors to support the new use finding.

Section 5(a)(2) of TSCA provides that EPA's determination that a use of a chemical substance is a significant new use must be made after a consideration of all relevant factors including:

(A) The projected volume of manufacturing and processing of a chemical substance.

(B) the extent to which a use changes the type or form of exposure of human beings or the environment to a chemical substance.

(C) The extent to which a use increases the magnitude and duration of exposure of human beings or the environment to a chemical substance.

(D) The reasonably anticipated manner and methods of manufacturing, processing, distribution in commerce, and disposal of a chemical substance.

EPA construes the statute to allow consideration of any other relevant factors, in addition to those enumerated in section 5(a)(2)(A) through (D).

In the case of P–88–1763, EPA's determination under section 5(a)(2) fully complied with all of the statutory requirements. In addition to the four statutory factors, EPA also took into account the consideration that the original PMN submitter had been subject to a section 5(e) consent order to control a potential unreasonable risk. Based on the findings in this consent order and on a consideration of other relevant factors under section 5(a)(2), EPA believes it is reasonable to require other manufacturers, importers, and processors to submit a notice prior to engaging in any of the significant new uses because they involve potential unreasonable risks. Section 5(a)(2) of TSCA allows EPA to consider all relevant factors. All of the significant new uses in the SNUR for P–88–1763 are new because they are not allowed in the section 5(e) consent order and no other parties have demonstrated that they are ongoing.

When designating a significant new use of P–88–1763 to be any manufacturing, importing, or processing without the hazard communication program specified in § 721.72 of the SNUR, EPA considered that an effective hazard communication program, which includes such provisions as warning statements on the label and MSDS and worker training, addresses such factors in section 5(a)(2) as type, form, duration, and magnitude of exposure as well as methods of manufacturing, processing, and use.

When designating use as a blowing agent in the manufacture of structural insulation foams for commercial or consumer purposes or use of structural insulation foams for commercial or consumer purposes made using this substance as a significant new use of P–88–1763, EPA considered such factors in section 5(a)(2) as type, form, duration, and magnitude of exposure as well as methods of manufacturing, processing, and use.

When designating the aggregate manufacture and importation volume above the amount designated in the section 5(e) consent order for P–88–1763 as a significant new use, EPA considered such factors in section 5(a)(2) as duration and magnitude of exposure, as well as projected volume of manufacturing and processing.

IV. Substance Subject to This Rule

EPA is promulgating significant new use and recordkeeping requirements for the following chemical substance under part 721 subpart E.

PMN Number P–88–1763

Chemical name: Ethane, 2-chloro-1,1,1,2-tetrafluoro-.

CAS Number: 2837–89–0.

Effective date of section 5(e) consent order: October 16, 1990.

Basis for section 5(e) order: The order was issued under sections 5(e)(1)(A)(i), (ii)(I), and (ii)(II) of TSCA based on the

finding that this substance may present an unreasonable risk of injury to health, the substance will be produced in substantial quantities, and there may be significant or substantial human exposure to the substance.

Toxicity concern: Similar substances have been shown to cause cancer and developmental toxicity in laboratory animals. However, data from a recently submitted 90–day inhalation study in rats on P–88–1763 have mitigated the Agency's concerns for liver toxicity. Further, the only signs of neurotoxicity in this study were sedation effects commonly associated with this class of chemicals.

Recommended testing: EPA has determined that a two-species developmental inhalation toxicity study (40 CFR 798.4000) would help characterize possible developmental toxicity of the substance, and a 2–year, two-species inhalation bioassay (40 CFR 798.3300) would help characterize the possible carcinogenicity of the substance. The order contains two production limits. The PMN submitter has agreed not to exceed the first production limit without performing the developmental toxicity study. The submitter has also agreed not to exceed the second production limit without performing the 2–year bioassay.

CFR Citation: 40 CFR 721.3180.

V. Applicability of SNUR to Uses Occurring Before Effective Date of the Final SNUR

EPA has decided that the intent of section 5(a)(1)(B) is best served by designating a use as a significant new use as of the date of the Federal Register notice that first identifies the new use rather than as of the effective date of the rule. Because this SNUR was first published on April 25, 1991, as a direct final rule, that date will serve as the date after which uses will be considered to be new uses. If uses which had commenced between that date and the effective date of this final rule were considered ongoing, rather than new, any person could defeat the SNUR by initiating a significant new use before the effective date. This would make it difficult for EPA to establish SNUR notice requirements. Thus, persons who begin commercial manufacture, import, or processing of the substance for uses regulated through this SNUR after April 25, 1991, will have to cease any such activity before the effective date of this rule. To resume their activities, such persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires. EPA, not wishing to unnecessarily disrupt the activities of persons who begin commercial manufacture, import, or processing for a proposed significant new use before the effective date of the SNUR, has promulgated provisions to allow such persons to comply with this SNUR before it is promulgated. If a person were to meet the conditions of advance compliance as codified at § 721.45(h) (53 FR 28354, July 17, 1988), the person would be considered to have met the requirements of the final SNUR for those activities. If persons who begin commercial manufacture, import, or processing of the substances between the publication of the direct final rule and the effective date of the SNUR do not meet the conditions of advance compliance, they must cease that activity before the effective date of the rule. To resume their activities, these persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires.

VI. Economic Analysis

EPA evaluated the potential costs of establishing significant new use notice requirements for potential manufacturers, importers, and processors of the chemical substance at the time of the direct final rule. The Agency's complete economic analysis is available in the public record for this rule (OPPTS–50591C).

VII. Rulemaking Record

EPA has established a record for this rulemaking (docket control number OPPTS–50591C). The record includes basic information considered by the Agency in developing this rule. The record includes the following information:

1. The premanufacture notice.
2. The Federal Register notice announcing receipt of the PMN.
3. The section 5(e) order.
4. The direct final, withdrawal of direct final, and proposed SNUR.
5. The economic analysis of this rule.
6. The toxicology support document.
7. The engineering support document.
8. The exposure support document.
9. The risk assessment support document.
10. Public comments.

A public version of the record, without any Confidential Business Information, is available in the TSCA Public Docket Office from 8 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday, except legal holidays. The TSCA Public Docket Office is located in rm. NE–G004, 401 M St., SW., Washington, DC.

VIII. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a rule is "major" and therefore requires a Regulatory Impact Analysis. EPA has determined that this rule is not a "major" rule because it will not have an effect on the economy of $100 million or more, and it will not have a significant effect on competition, costs, or prices. While there is no precise way to calculate the total annual cost of compliance with this rule, EPA estimates that the cost for submitting a significant new use notice would be approximately $4,500 to $11,000, including a $2,500 user fee payable to EPA to offset EPA costs in processing the notice.

EPA believes that, because of the nature of the rule and the substance involved, there will be few significant new use notices submitted. Furthermore, while the expense of a notice and the uncertainty of possible EPA regulation may discourage certain innovation, that impact would be limited because such factors are unlikely to discourage an innovation that has high potential value.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), EPA has determined that this rule will not have a significant impact on a substantial number of small businesses. EPA has not determined whether parties affected by this rule are likely to be small businesses. However, EPA expects to receive few SNUR notices for the substance. Therefore, EPA believes that the number of small businesses affected by this rule will not be substantial, even if all of the SNUR notice submitters are small firms.

C. Paperwork Reduction Act

OMB has approved the information collection requirements contained in this rule under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), and has assigned OMB control number 2070–0012.

Public reporting burden for this collection of information is estimated to vary from 30 to 170 hours per response, with an average of 100 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

List of Subjects in 40 CFR Part 721

Chemicals, Environmental protection, Hazardous materials, Recordkeeping and reporting requirements, Significant new uses.

Dated: July 7, 1992.

Victor J. Kimm,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, 40 CFR part 721 is amended as follows:

PART 721—[AMENDED]

1. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

2. By adding a new § 721.3180 to subpart E to read as follows:

§ 721.3180 Ethane, 2-chloro-1,1,1,2-tetrafluoro-.

(a) Chemical substances and significant new uses subject to reporting. (1) The chemical substance identified as ethane, 2-chloro-1,1,1,2-tetrafluoro- (CAS number 2837–89–0) (PMN P–88–1763) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (e) (concentration set at 1.0 percent; concentration is set at 0.1 percent if new information requires a hazard statement on the MSDS for cancer pursuant to § 721.72(c)(5)), (f), and (g)(5). The following additional human hazard precautionary statement shall appear on the MSDS as specified in § 721.72(c):

Inhalation of high concentrations of vapor is harmful and may cause heart irregularities, unconsciousness, or death. Intentional misuse can be fatal. Vapor reduces oxygen available for breathing and is heavier than air. Liquid contact causes frostbite. The effects in animals from single exposure by inhalation include central nervous system effects, anesthesia, and decreased blood pressure. Cardiac sensitization occurred in dogs exposed to a concentration of 2.5 percent in air and given an intravenous epinephrine challenge. Repeated exposures produced increased liver weights, anesthetic effects, irregular respiration, poor coordination, and nonspecific effects such as decreased body weight gain. However, no irreversible effects were seen as evidenced by histopathologic evaluation. As part of an extensive toxicology program, halogenated chlorofluorocarbon–124 will be tested in subchronic, developmental, and chronic/cancer studies. Avoid breathing high concentration of vapor. Use with sufficient ventilation to keep employee exposure below recommended limits. Avoid contact of liquid with skin and eyes. Wear chemical splash goggles and lined butyl gloves. Do NOT allow product to contact open flame or electrical heating elements because dangerous decomposition products may form.

The following additional human health hazard precautionary statements shall appear on each label as specified in § 721.72(b):

Inhalation of high concentrations of this substance in vapor form may cause:

(a) Heart irregularities.
(b) Unconsciousness.
(c) Death.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(q). In addition it is a significant new use to use this substance as a blowing agent in the manufacture of structural insulation foams for commercial or consumer purposes or to use for commercial or consumer purposes structural insulation foams made using this substance.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) Processors of this substance are not subject to this section if they only service, repair, maintain, or sell products that contain the substance.

(2) Notwithstanding § 721.45(f), importers of structural insulation foams made using this substance are subject to notification requirements.

(3) *Recordkeeping requirements.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance: § 721.125(a), (b), (c), and (f) through (i).

(4) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(5) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

[FR Doc. 92–17026 Filed 7–21–92; 8:45 am]

BILLING CODE 6560–50–F

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101–45

[FPMR Amendment H–186]

Utilization and Disposal of Personal Property

AGENCY: Federal Supply Service, GSA.

ACTION: Final rule.

SUMMARY: This regulation provides for use of the revised edition of Standard Form (SF) 97, The United States Government Certificate to Obtain Title to a Vehicle. The Standard Form 97 was revised because of amendments to 49 CFR part 580, Odometer Disclosure Requirements, and because of difficulties experienced by State motor vehicle administrations (MVAs) when titling vehicles transferred by the Federal Government to the vehicle purchaser. The odometer mileage disclosure statement portion of the SF 97 was amended to comply with the revised requirements of 49 CFR part 580.

EFFECTIVE DATE: July 22, 1992.

FOR FURTHER INFORMATION CONTACT: Lester D. Gray, Director, Property Management Division (703–305–7240).

SUPPLEMENTARY INFORMATION: The General Services Administration (GSA) has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for and consequences of this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

List of Subjects in 41 CFR Part 101–45

Government property management, Reporting requirements, Surplus Government property.

PART 101–45.3—SALE, ABANDONMENT, OR DESTRUCTION OF PERSONAL PROPERTY

1. The authority citation for part 101–45 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390 (40 U.S.C. 486(c)).

Subpart 101–45.3—Sale of Personal Property

2. Section 101–45.303–3 is amended by revising paragraph (c) and adding paragraph (d) as follows:

§ 101–45.303–3 Delivery.

* * * * *

(c) The Standard Form (SF) 97, the United States Government Certificate to Obtain Title to a Vehicle, is a four-part form issued on continuous feed paper.

The original certificate is produced on secure paper to readily identify any attempt to alter the form. The SF 97 shall be signed in accordance with requirements established by the head of the agency selling the vehicle. The SF 97 is an accountable form and is serially numbered during the printing process. Each agency shall have an accountable officer who will be responsible for the requisition, storage, and issuance of the SF 97. Certificates showing erasures or strikeovers will be considered invalid. Proper precautions shall be exercised by all agency accountable officers to prevent blank copies of the SF 97 from being obtained by unauthorized persons.

(d) Delivery of motor vehicles to purchasers shall be evidenced by submission to the purchaser of a completed original of the SF 97. Two copies of the SF 97 shall be furnished to the owning agency (one copy for the reporting office and one copy for the custodian) and the other copy shall be furnished the contracting officer of the agency effecting the sale or transfer of the motor vehicle. The SF 97 is illustrated at § 101–45.4901–97. Other certificates of release or bills of sale shall not be used in lieu of the SF 97. Instructions for the use of the SF 97 are in § 101–45.4901–97–1.

Subpart 101–45.49—Illustrations of Forms

3. Section 101–45.4901–97 is revised to read as follows:

§ 101–45.4901–97 Standard Form 97, The United States Government Certificate to Obtain Title to a Vehicle.

§ 101–45.4901–97A [Removed]

4. Section 101–45.4901–97A is removed.

Dated: June 25, 1992.

Richard G. Austin,

Administrator of General Services.

[FR Doc. 92–17203 Filed 7–21–92; 8:45 am]

BILLING CODE 6820–24–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Chapter I, Subchapter J

Vaccine Injury Compensation; Calculation of Cost of Health Insurance; Editorial Corrections

AGENCY: Public Health Service, HHS.

ACTION: Corrections.

SUMMARY: This document provides editorial corrections in the words of issuance and amendatory instruction, the subchapter heading, and the authority citation of the final rule published Wednesday, June 24, 1992 (57 FR 28098–99) concerning the Secretary's determination of the average cost of a health insurance policy, for purposes of computing compensation amounts under the National Vaccine Injury Compensation Program.

EFFECTIVE DATE: July 23, 1992.

FOR FURTHER INFORMATION CONTACT: Thomas E. Balbier, Jr., Director, Division of Vaccine Injury Compensation, 6001 Montrose Rd., room 702, Rockville, MD 208523; telephone (301) 443–6593.

SUPPLEMENTARY INFORMATION:

Background

The final rule whose words of issuance and amendatory instruction, subchapter heading, and authority citation are herein corrected provides the Secretary's determination of the average cost of a health insurance policy, for purposes of compensation computations under the National Vaccine Injury Compensation Program.

Need for Correction

As published, the final rule will create potentially misleading editorial complications when the 1992 edition of Volume 42 of the Code of Federal Regulations is published.

Corrections of Publication

Accordingly, the following corrections are made to final rule published Wednesday, June 24, 1992. On page 28099, in the third column:

1. The words of issuance and amendatory instruction following the signature block are corrected to read as follows:

Accordingly, 42 CFR Chapter I, subchapter J, is amended by revising the subchapter heading and by adding a new part 100, as follows:

2. The heading of subchapter J is revised to read as follows:

SUBCHAPTER J—VACCINES

3. The authority citation for part 100 is corrected to read as follows:

Authority: Sec. 215 of the Public Health Service Act (42 U.S.C. 216); Sec. 2115 of the Public Health Service Act, Pub. L. 99–660, 100 Stat. 3767, as amended (42 U.S.C. 300aa–15).

Dated: July 15, 1992.

John Gallivan,

PHS Regulations Officer.

[FR Doc. 92–17236 Filed 7–21–92; 8:45 am]

BILLING CODE 4160–17–M

OFFICE OF PERSONNEL MANAGEMENT

45 CFR Part 801

Voting Rights Program

AGENCY: Office of Personnel Management.

ACTION: Final rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is establishing a new office for filing applications or complaints under the Voting Rights Act of 1965, as amended. The Acting Attorney General has determined that this designation is necessary to enforce the guarantees of the Fourteenth and Fifteenth amendments to the Constitution.

DATES: This rule is effective June 21, 1992. In view of the need for its publication without an opportunity for prior comment, comment will still be considered. To be timely, comments must be received on or before August 21, 1992.

ADDRESS: Send or deliver comments to Stephanie J. Peters, Attorney, Office of Personnel Management, room 7350, 1900 E Street, NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Stephanie J. Peters, (202) 606–1920.

SUPPLEMENTARY INFORMATION: The Acting Attorney General has designated McIntosh County as an additional examination point under the provisions of the Voting Rights Act of 1965, as amended. He determined on July 17, 1992, that this designation is necessary to enforce the guarantees of the Fourteenth and Fifteenth amendments to the Constitution. Accordingly, pursuant to section 6 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973d, OPM will appoint Federal Examiners to review the qualifications of applicants to be registered to vote and Federal observers to observe local elections.

Under section 553(b)(3)(B) of title 5 of the United States Code, the Director finds that good cause exists for waiving the general notice of proposed rulemaking. The notice is being waived because of OPM's legal responsibilities under 42 U.S.C. 1973e(a) and other parts of the Voting Rights Act of 1965, as amended, which require OPM to publish counties certified by the U.S. Attorney General and locations within these counties where citizens can be federally listed and become eligible to vote, and where Federal observers can be sent to observe local elections.

Under section 553(d)(3) of title 5 of the United States Code, the Director finds that good cause exists to make this amendment effective in less than 30 days. The regulation is being made effective immediately in view of the pending election to be held in the subject county, where Federal observers will observe the election under the authority of the Voting Rights Act of 1965, as amended.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under § 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it adds one new location to the list of counties in the regulations concerning OPM's responsibilities under the Voting Rights Act.

List of Subjects in 45 CFR Part 801

Administrative practice and procedure, Voting rights.

U.S. Office of Personnel Management.

Douglas A. Brook,

Acting Director.

Accordingly, OPM is amending 45 CFR part 801 as follows:

PART 801—VOTING RIGHTS PROGRAM

1. The authority citation for part 801 continues to read as follows:

Authority: 5 U.S.C. 1103; secs. 7, 9, 79 Stat. 440, 441 (42 U.S.C. 1973e, 1973g).

2. Appendix A to part 801 is amended by adding alphabetically McIntosh County of Georgia to read as follows:

Appendix A to Part 801

* * * * *

Georgia

* * * * *

McIntosh: Best Western, Swiss Inn, room 115, Highway 251 and Interstate 95, Darien, Georgia 31304; (912) 437–4418 or 4421; July 21, 1992.

* * * * *

[FR Doc. 92–17351 Filed 7–20–92; 12:01 pm]

BILLING CODE 6325–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[PR Docket No. 89–552; FCC 92–261]

Use of the 220–222 MHz Band by the Private Land Mobile Radio Services

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration.

SUMMARY: The Commission has adopted a Memorandum Opinion and Order which addresses several issues raised on reconsideration of its previously adopted Report and Order, as well as the issues presented in the Further Notice of Proposed Rule Making issued in the proceeding. Specifically, with respect to the points raised on reconsideration, the Memorandum Opinion and Order affirms the following aspects of the Report and Order: The expedited effectiveness of the rule delineating the procedures for processing 200 MHz applications; the exclusion of wireline telephone common carriers from eligibility for commercial licensing in the band; various financial requirements and other entry criteria, with the exception of the "second audit" requirement applicable to nationwide applicants, which is eliminated; and the decision to restrict access to those channels set aside for public safety/mutual aid use to Public Safety Radio Service licensees. With respect to the issues raised in the Further Notice, the Memorandum Opinion and Order concludes that lotteries should be used to select all nationwide licensees, and that the construction and operational requirements applicable to non-commercial nationwide licensees should be strengthened to ensure that these channels are used as envisioned for internal communications purposes.

EFFECTIVE DATE: October 20, 1992.

FOR FURTHER INFORMATION CONTACT: Karen Kincaid, (202) 634–2443, Private Radio Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order, PR Docket No. 89–552, FCC 92–261, adopted June 18, 1992, and released July 16, 1992. The full text of this Memorandum Opinion and Order is available for inspection and copying during normal business hours in the FCC Dockets Branch, room 230, 1919 M Street NW., Washington, DC. The complete text may be purchased from the Commission's copy contractor, Downtown Copy Center, 1114 21st Street, Washington, DC 20036, telephone (202) 452–1422.

Summary of Memorandum Opinion and Order

1. In March 1991, the Commission adopted the Report and Order (56 FR 19598, April 29, 1991) that forms the basis of this proceeding, establishing service rules to govern narrowband land mobile operations at 220–222 MHz. The first issue raised on reconsideration of the Report and Order concerns the expedited effectiveness of the rule delineating the procedures for processing 220–222 MHz applications, which the Commission permitted to become effective two days after publication in the **Federal Register**. In the Memorandum Opinion and Order, the Commission affirmed the early effectiveness of the rule at issue, 47 CFR 90.711, noting that in its recent Order on Reconsideration in the wireless cable proceeding, Order on Reconsideration, Gen. Docket Nos. 90–54, 80–113, 6 FCC Rcd 6764, *pet. for review pending sub nom.* United States Independent Microwave Television Ass'n v. FCC, No. 91–1637 (D.C. Cir. filed Dec. 20, 1991), the Commission considered the legality of its decision to make a rule essentially identical to § 90.711 effective immediately upon publication in the **Federal Register**, and concluded that rules of this nature are not subject to the advance publication requirement of the Administrative Procedure Act.

2. Next, the Commission addressed various arguments challenging 47 CFR 90.703(c), which provides that any person except a wireline telephone common carrier is eligible for commercial licensing at 220–222 MHz. The issues raised on reconsideration with respect to this rule were (1) that § 90.703(c) is invalid because the rationale undergirding it was not discussed in either the Notice or Report and Order as was required, the petitioner alleged, by sections 553(b) and 553(c) of the Administrative Procedure Act, and (2) that the restriction is undesirable on its merits. In rejecting the first of these contentions, the Commission stated that the full text of § 90.703(c) was set forth in the appendix to both the Notice and the Report and Order, which fully satisfied the requirements of the Administrative Procedure Act. The Commission affirmed the wireline limitation on its merits, stating that the retention of the wireline restriction should encourage competition until the Commission is better able to evaluate the extent to which private land mobile services might prove to be true

competitors to cellular and similar technologies.

3. Next, the Commission decided to adhere to its original decision to use lotteries to select among mutually exclusive applications, thus foregoing the suggestion advanced in the Further Notice of Proposed Rule Making (57 FR 4180, February 4, 1992) that comparative hearings might prove useful in the nationwide context. The Commission did, however, proceed with its proposal to strengthen the construction and operational standards applicable to non-commercial nationwide licensees. Specifically, the Commission amended its rules to (1) require nationwide non-commercial licensees to construct at least one base station in a minimum of 70 markets within five rather than ten years of licensing; (2) prohibit the transfer or assignment of nationwide non-commercial licenses during the entire ten-year license term rather than after 40 percent of the licensee's system has been constructed; (3) require non-commercial nationwide applicants to demonstrate an actual presence or long-term business plan that necessitates internal communications capacity in the 70 or more markets identified in the license application; and (4) bar the leasing of excess capacity on the nationwide non-commercial channels during the first five years of the license term. The additional showings responsive to these rule changes must be filed within thirty days after the effective date of the Memorandum Opinion and Order. The Commission also stated that if, in light of any of these rule changes, a nationwide non-commercial applicant wishes to withdraw its application, it will be permitted to do so any time before the lottery is held, and its application fees will be refunded.

4. The Commission then considered various claims concerning the financial and reporting requirements adopted in the Report and Order. The Commission affirmed the Report and Order in all such respects except the "second audit" requirement contained in 47 CFR 90.713(b), which the Commission modified to provide that applicants are not required to submit a second audited balance sheet but may instead submit an unaudited, certified balance sheet for the purpose of satisfying § 90.713(b).

5. Finally, the Commission affirmed its decision to permit only Public Safety Radio Service licensees to be permitted access to the channels set aside for public safety/mutual aid use.

Final Regulatory Flexibility Analysis

Need and Purpose of This Action

This Memorandum Opinion and Order addresses several specific issues presented by the Report and Order and Further Notice of Proposed Rule Making previously adopted in the same proceeding. The rule changes adopted herein are responsive to concerns raised by applicants and other members of the public concerning the financial and reporting requirements applicable to 220 NHz nationwide licensees and the construction and operational requirements applicable to 220 MHz non-commercial nationwide licensees. These rule changes are designed to serve the public interest by ensuring that only the most qualified entities are selected as licensees, thereby guaranteeing prompt and effective delivery of service.

Summary of the Issues Raised

None of the petitions for reconsideration or comments filed in response thereto addressed the Final Regulatory Flexibility Analysis presented in the Report and Order. Similarly, none of the comments filed in response to the Initial Regulatory Flexibility Analysis contained in the Further Notice of Proposed Rule Making addressed the same.

Significant Alternatives Considered

Several alternatives were discussed in the earlier phases of this proceeding. All significant alternatives have been addressed.

List of Subjects in 47 CFR Part 90

Private land mobile radio services, radio.

Amendatory Text

1. The authority citation for part 90 continues to read as follows:

Authority: Sec. 4, 303, 332 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303, and 332 unless otherwise noted.

2. 47 CFR 90.709 is amended by adding paragraph (a)(4) to read as follows:

§ 90.709 Special limitations on amendment of applications and on assignment or transfer of authorizations licensed under this subpart.

(a) * * *

4. Any application to transfer or assign a nationwide non-commercial system before the expiration of the first ten-year license term.

* * * * *

3. 47 CFR 90.713 is amended by revising paragraphs (a) and (b) to read as follows:

§ 90.713 Entry criteria.

(a) As set forth in § 90.717, two blocks of ten and six blocks of five contiguous channels have been set aside for exclusive assignments for non-government use on a nationwide basis. Depending upon whether the application is for nationwide commercial or non-commercial channel blocks, it must comply with the following:

(1) Applicants for commercial nationwide channels must include certification that, within ten years of receiving a license, the applicant will construct a minimum of one base station in at least 70 different geographic areas; that base stations will be located in a minimum of 28 of the 100 urban areas listed in § 90.741; that each base station in the ten large urban areas designated in § 90.725(h) will have all assigned nationwide channels constructed and in operation (regularly interacting with mobile and/or portable units); and that all other base stations will have a minimum of five of the assigned nationwide channels constructed and in operation. Applicants for non-commercial nationwide channels must include certification that, within five years of receiving a license, the applicant will construct a minimum of at least one base station in at least 70 different geographic areas designated in the application; that base stations will be located in a minimum of 28 of the 100 urban areas listed in § 90.741; that each base station in the ten large urban areas designated in § 90.725(h) will have all assigned nationwide channels constructed and in operation (regularly interacting with mobile and/or portable units); and that all other base stations will have a minimum of five of the assigned nationwide channels constructed and in operation.

(2) Applicants for commercial and non-commercial nationwide channels must include certification that they will meet the construction requirements set forth in § 90.725.

(3) Applicants for commercial nationwide channels must include a ten-year schedule detailing plans for construction of the proposed system. Applicants for non-commercial nationwide channels must include a five-year schedule detailing plans for construction of the proposed system.

(4) Applicants for commercial nationwide channels must include an itemized estimate of the cost of constructing 40 percent of the system and operating the system during the first four years of the license term. Applicants for non-commercial nationwide channels must include an itemized estimate of the cost of

constructing the entire system within five years.

(5) Applicants for commercial nationwide channels must include proof that the applicant has sufficient financial resources to construct 40 percent of the system and operate the proposed system for the first four years of the license term; *i.e.*, that the applicant has net current assets sufficient to cover estimated costs or a firm financial commitment sufficient to cover estimated costs. Applicants for non-commercial nationwide channels must include proof that the applicant has sufficient financial resources to construct the entire system within five years of the license grant; *i.e.*, that the applicant has net current assets to cover estimated costs or a firm financial commitment sufficient to cover estimated costs.

(6) Applicants for non-commercial nationwide licensing must also submit a certification demonstrating an actual presence or business plan necessitating internal communications capacity in the 70 or more markets identified in the license application.

(b) Applicants relying on personal or internal resources for the showing in paragraph (a) of this section must submit independently audited financial statements certified within one year of the date of the application showing net current assets sufficient to meet estimated construction and operating costs. Applicants must also submit a balance sheet current within 60 days of its submission that clearly shows the continued availability of sufficient net current assets to construct and operate the proposed system for one year and a certification by the applicant or an officer of the applicant organization attesting to the validity of the unaudited balance sheet.

* * * * *

4. 47 CFR 90.719 is amended by revising the note to read as follows:

§ 90.719 Individual channels available for assignment in the 220–222 MHz band.

* * * * *

Note: Channels 181–185 are indefinitely reserved until further Commission action, and are not currently available for assignment or use.

5. 47 CFR 90.725 is amended by revising the introductory portion of paragraphs (a), (d) and (h) to read as follows:

§ 90.725 Construction requirements.

(a) Licensees granted commercial nationwide authorizations will be required to construct base stations having a minimum of five assigned nationwide channels and place those base stations in operation as follows:

* * * * *

(d) Each commercial nationwide licensee must file a system progress report on or before the anniversary date of the grant of its license after 2, 4, 6 and 10 years, demonstrating compliance with the relevant construction benchmark criteria.

* * * * *

(h) Licensees granted non-commercial nationwide authorizations will be required to construct base stations in a minimum of 70 markets designated in the application within five years of the initial license grant.

* * * * *

6. 47 CFR 90.733 is amended by revising paragraph (d) to read as follows:

§ 90.733 Permissible operations.

* * * * *

(d) Licensees of non-commercial nationwide systems may lease excess capacity of their systems as private carriers five years after the date of original license grant provided that their system is fully constructed and operational.

7. The authority citation for part 97 continues to read as follows:

Authority: 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609, unless otherwise noted.

8. 47 CFR 97.301 is amended by revising the third line entry in the Table in paragraph (a) to read as follows:

§ 90.301 Authorized frequency bands.

* * * * *

(a) * * *

Wavelength band	ITU region 1	ITU region 2	ITU region 3	Sharing requirements see § 97.303 (paragraph)
* * * * *	*	*	*	
1.25 m		222–225		(a)
* * * * *	*	*	*	

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92–17210 Filed 7–21–92; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 90

[PR Docket No. 86–3; FCC 92–270]

Eligibility in the Specialized Mobile Radio Services

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has adopted an Order terminating PR Docket No. 86–3, in which the Commission previously issued a Notice of Proposed Rule Making soliciting comment on a proposal to amend the rule that precludes wireline telephone common carriers from becoming base station licensees in the Specialized Mobile Radio (SMR) service. The Commission terminated the proceeding because the SMR industry has undergone numerous changes since the adoption of the Notice, rendering both the rationale upon which the original proposal was predicated and the comments filed in response thereto no longer relevant to a meaningful determination of whether the wireline limitation should be removed.

EFFECTIVE DATE: August 21, 1992.

FOR FURTHER INFORMATION CONTACT: Karen Kincaid, (202) 634–2443, Private Radio Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order, PR Docket No. 86–3, FCC 92–270, adopted June 19, 1992, and released July 15, 1992. The full text of this Order is available for inspection and copying during normal business hours in the FCC Dockets Branch, room 230, 1919 M Street NW., Washington, DC. The complete text may be purchased from the Commission's, copy contractor, Downtown Copy Center, 1114 21st Street, Washington, DC 20036, telephone (202) 452–1422.

Summary of Order

1. In 1986, the Commission adopted the Notice of Proposed Rule Making 51 FR 2910, January 22, 1986 that forms the basis of this proceeding, broadly proposing to eliminate the rule prohibiting wireline telephone common carriers from being eligible to become base station licensees in the SMR service. Since 1986, however, the SMR industry has undergone numerous changes. For example, the industry has experienced tremendous growth in terms of both the number of SMR licensees and the amount of capital generated by SMR service providers. In addition, although the SMR marketplace has ordinarily been characterized by the existence of a number of distinct licensees, the industry has experienced a recent trend toward consolidation.

2. Because these changes have occurred in the period of time subsequent to the issuance of the notice, neither the rationale upon which the original proposal was predicated nor the comments filed in response to the proposal necessarily remain relevant to a meaningful determination of whether the wireline limitation should be removed.

3. Moreover, at present, the Commission is persuaded that the wireline limitation serves a useful purpose. Recent trends in the SMR service reflect that private carrier land mobile providers have begun to emerge as innovative and viable competitors to common carrier land mobile offerings. By retaining the wireline restriction at least until the Commission has had an opportunity to evaluate fully the competitive potential of private land mobile services vis-a-vis common carrier land mobile providers, the Commission will be able to preserve a climate favorable to the continued development of private land mobile competitors.

4. Finally, the Commission addressed the status of several waivers of the wireline prohibition that were granted conditioned on the outcome of PR Docket No. 86-3. Specifically, the Commission concluded that its decision to terminate PR Docket No. 86-3 and to retain the wireline prohibition also necessitate the termination of these outstanding waiver grants. Accordingly, all outstanding conditional waivers of 47 CFR 90.603(c) will be terminated within ninety days of the effective date of this Order unless, within sixty days after the effective date, the recipients of these waivers submit a showing demonstrating how, in view of the policy considerations undergirding the wireline restriction, the public interest will be served by the continuation of waiver status.

Final Regulatory Flexibility Analysis

Need and Purpose of This Action

The *Order* terminates the inquiry initiated in PR Docket No. 86-3. This action serves the public interest by maintaining an environment favorable to the development of private land mobile competitors until the Commission has had an opportunity to create a record based on the current status of the industry.

Summary of the Issues Raised

None of the comments filed in response to the *Notice* addressed the Initial Regulatory Flexibility Analysis presented in therein.

Significant Alternatives Considered

All significant alternatives have been addressed.

List of Subjects in 47 CFR Part 90

Private land mobile radio service, Radio, Specialized mobile radio services.

Federal Communications Commission.

Donna R. Searcy,

Secretary,

[FR Doc. 92-17206 Filed 7-21-92; 8:45 am]

BILLING CODE 6712-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1109

[Ex Parte No. 55 (Sub. No. 83)]

Use of Alternative Dispute Resolution Procedures in Commission Proceedings and Those in Which the Commission is a Party

AGENCY: Interstate Commerce Commission.

ACTION: Final rule.

SUMMARY: The Commission is amending its rules of practice to implement the Administrative Dispute Resolution Act (ADRA), Public Law 101-552, and the Negotiated Rulemaking Act (Reg-neg.), Public Law 101-648. These statutes amend the Adminstrative Procedure Act by authorizing and encouraging adminstrative agencies to use arbitration, mediation, negotiated rulemaking, and other consensual methods of dispute resolution where appropriate. The Commission is adopting general procedures as set forth below to facilitate broad use of ADR and Reg-neg in all Commission proceedings where appropriate. The new procedures: allow formal ICC proceedings to be held in abeyance, even where statutory deadlines apply, to allow ADR procedures to proceed; provide procedures for limited appeal of arbitration decisions; and provide for protection of confidential information obtained through the ADR process.

EFFECTIVE DATE: The Commission's final rule be effective August 21, 1992.

FOR FURTHER INFORMATION CONTACT: Louis Mackall (202) 927-6056. [TDD for hearing impaired: (202) 927-5721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC, 20423. Telephone (202 289-4357 or 4359. [Assistance for the hearing impaired is available through TDD services (202) 927-5721.]

This action will not significantly affect either the quality of the human environment or conservation of energy resources. This proposal should benefit small entities in instances where it is used by simplifying and reducing the cost of regulatory procedures. Because these ADR procedures are purely voluntary, small entities need not consent to them if they do not believe they will benefit. The proposed rule was published on December 12, 1991 at 56 FR 64737.

List of Subjects in 49 CFR Part 1109

Administrative practice and procedure, Motor carriers, Railroads, Reporting and Recordkeeping requirements, Water carriers.

Decided: July 3, 1992.

By the Commission: Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons, Phillips, and Emmett.

Sidney L. Strickland, Jr.,

Secretary,

For the reasons set forth in the preamble, title 49, chapter X, is to be amended as follows:

1. A new part 1109 is added to read as follows:

PART 1109—USE OF ALTERNATIVE DISPUTE RESOLUTION IN COMMISSION PROCEEDINGS AND THOSE IN WHICH THE COMMISSION IS A PARTY

Sec.

Authority: 5 U.S.C. 553, 559, and 582.

§ 1109.1 Invoking ADR in Commission proceedings.

Any proceeding may be held in abeyance for 90 days while administrative dispute resolution (ADR) procedures (such as arbitration and mediation) are pursued. (Additional 90 day periods can be requested.) The period while any proceeding is held in abeyance to facilitate ADR will not be counted towards the statutory deadlines. All parties are required to indicate their written consent for ADR treatment. Requests that a proceeding be held in abeyance while ADR procedures are pursued should be submitted to the Office of the Secretary. The Secretary shall promptly issue an order in response to such requests. Unless arbitration or some other binding process involving a neutral has been undertaken, any party believing that ADR procedures are not yielding the intended results shall inform the Secretary and all parties in writing, and normal agency procedures will be reactivated by the Secretary by notice served on all the parties.

§ 1109.2 Appeals from arbitration decisions.

Appeals are limited to clear errors of general transportation importance, and not issues of causation or fact. Arbitration awards can be challenged on the basis that they do not take their essence from the Interstate Commerce Act, or are not limited to the matters the parties have refered for arbitration. Appeals are limited to 10 typewritten pages. Parties will have 20 days from the service date of the decision to file, and opposing parties 20 days to answer. Arbitration decisions will become effective in 30 days unless a party seeks a stay of the decision within 10 days of its issuance, and we grant the stay. Appeals and stay petitions should be limited to extraordinary circumstances.

§ 1109.3 Confidentiality in ADR matters.

In all ADR matters involving the Commission, whether under the Administrative Dispute Resolution Act or not, the confidentiality provisions of ADRA (5 U.S.C. 584) shall bind the Commission and all parties and neutrals in those ADR matters.

[FR Doc. 92-17290 Filed 7-21-92; 8:45 am]
BILLING CODE 7035-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 630

[Docket No. 910640-1140]

Atlantic Swordfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Reopening of the drift gillnet fishery.

SUMMARY: Subject to the conditions below, the Secretary of Commerce (Secretary) reopens the drift gillnet fishery for swordfish in the Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea. The Secretary has determined that a substantial amount of annual quota for swordfish that may be harvested by drift gillnet was not harvested by July 8, 1992. This reopening is to allow the catch of swordfish by drift gillnet vessels to reach, but not exceed, the quota.

EFFECTIVE DATE: Reopening is effective 0001 hours local time July 22, 1992, through 1200 hours local time the day following the day that NMFS determines, based on actual catch, that fishing must cease. Public notification of closure will be made through call-in procedures contained in this rule and through subsequent notice in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Richard B. Stone, 301-713-2347.

SUPPLEMENTARY INFORMATION: The Atlantic swordfish fishery is managed under the Fishery Management Plan for Atlantic Swordfish and its implementing regulations at 50 CFR part 630 under the authority of the Magnuson Fishery Conservation and Management Act and the Atlantic Tunas Convention Act.

By final rule, effective December 10, 1991 (56 FR 65007, December 13, 1991), the Secretary implemented quotas and closure provisions for Atlantic swordfish. An annual quota was established for swordfish that could be harvested by drift gillnet during each of two periods, January 1 through June 30, and July 1 through December 31. Under 50 CFR 630.25(a), the Secretary is required to close the drift gillnet fishery for swordfish when its quota is reached, or is projected to be reached.

Approximately 32,000 pounds (14,515 kilograms) of swordfish were landed by drift gillnet vessels during January 1 through June 30, 1992. NMFS estimated that 15 drift gillnet vessels would begin fishing on or about July 1, 1992. Based on the number of vessels that would fish and recent average catch per set of approximately 1,570 pounds (712 kilograms) for the month of July, NMFS determined that the combined drift gillnet quota from the January 1 through June 30 period, and the July 1 through December 31 period, would be reached on or before July 8, 1992. Hence, the drift gillnet fishery for Atlantic swordfish was closed effective 0001 hours local time July 8, 1992.

After receiving the actual catch data, NMFS has determined that approximately 19,000 pounds (8,626 kilograms) remain unharvested. Because this is an unusual circumstance in that about 20 percent of the total quota remains unharvested, NMFS has determined that it is appropriate to reopen, with the following conditions to assure that the quota is not overrun.

Pursuant to the authority in 50 CFR 630.26, the reopening and continuation of the fishery are conditioned as follows:

(1) All drift gillnet fishermen must notify NMFS of intent to fish (this is already a requirement under the Marine Mammal Protection Act exemption program).

(2) All drift gillnet fishermen participating must report to Pat Gerrior at 508-548-5123 ext. 291 or Dick Stone at 301-713-2347 between 1000 and 1100 hours local time on each day the fishery remains open, beginning on July 22, 1992.

(3) The report must consist of the daily logbook entry, as required by § 630.5(a), for the number of fish and estimated total dressed carcass weight.

(4) After 1100 hours local time each day, NMFS will calculate the total amount harvested and will determine whether the fishery will remain open for another 24-hour period. It is the responsibility of each vessel owner or operator to ascertain whether the fishery will be open for an additional 24 hours. This information will be available from NMFS (Dick Stone, 301-713-2347) after 1200 hours (noon) each day. In addition, notification of closure will be made through publication in the Federal Register.

(5) When NMFS determines that the fishery must be closed, all drift gillnet fishing for swordfish must cease and all vessels with drift gillnets on board and swordfish in excess of the bycatch limits specified at § 630.25(c)(1) must be in port by 1300 hours local time of the following day.

(6) Vessels must notify the nearest NMFS port agent immediately on arrival in port.

After the closure of the drift gillnet fishery, a person aboard a vessel using

or having aboard a drift gillnet (1) may not fish for swordfish from the North Atlantic swordfish stock; (2) may not possess more than two swordfish per trip in the North Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea, north of 5° N. latitude; and (3) may not land more than two swordfish in an Atlantic, Gulf of Mexico, or Caribbean coastal state.

Classification

This action is authorized by 50 CFR 630.26 and complies with Executive Order 12291.

Authority: 16 U.S.C. 1801 *et seq.* and 16 U.S.C. 971 *et seq.*

List of Subjects in 50 CFR Part 630

Fisheries, Fishing, Reporting and recordkeeping requirements, treaties.

Dated: July 17, 1992.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92-17297 Filed 7-21-92; 8:45 am]

BILLING CODE 3510-22-M

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50 CFR Part 672

[Docket No. 911176-2018]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Closure.

SUMMARY: NMFS is establishing a directed fishing allowance and is closing the directed fishery for "other rockfish" in the Western Regulatory Area (statistical area 61) of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the total allowable catch (TAC) for "other rockfish" in this area.

DATES: Effective 12 noon, Alaska local time (A.l.t.), July 18, 1992, through 12 midnight, A.l.t., December 31, 1992.

FOR FURTHER INFORMATION CONTACT: David R. Cormany, Resource Management Specialist, Fisheries Management Division, NMFS, 907-586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for Groundfish of the GOA (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

The "other rockfish" TAC in statistical area 61 of the GOA, was established by the final notice of specifications (57 FR 2844, January 24, 1992) as 1,390 metric tons (mt).

The Director of the Alaska Region, NMFS (Regional Director), has determined, in accordance with § 672.20(c)(2)(ii), that the "other rockfish" TAC in statistical area 61 of the GOA will soon be reached. Therefore, the Regional Director is establishing a directed fishing allowance of 1,182 mt, and setting aside the remaining 208 mt as by-catch to support other anticipated groundfish fisheries. The Regional Director has determined that the directed fishing allowance has been reached. Consequently NMFS is prohibiting directed fishing for "other rockfish" in statistical area 61 of the GOA, effective from 12 noon, A.l.t., July 18, 1992, through 12 midnight, A.l.t., December 31, 1992.

Directed fishing standards for applicable gear types may be found in the regulations at § 672.20(g).

Classification

This action is taken under 50 CFR 672.20 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 17, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92-17237 Filed 7-21-92; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 57, No. 141
Wednesday, July 22, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Parts 1421 and 1427

Upland Cotton Adjusted World Price; Announcement Time of the Rice World Market Price and Valuation of Broken Kernel Rice in the World Rice Price Calculation

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the regulations to change the announcement time by the Commodity Credit Corporation (CCC) of the adjusted world price for rice and to restrict loan repayments, repayment-rate lock-ins, and applications for loan deficiency payments from beginning at 2 p.m. eastern time each Tuesday until an announcement of the adjusted world price of rice for the succeeding weekly period has been made. The announcement time change is being proposed in response to public comments that such change will improve the effectiveness of the rice marketing loan and loan deficiency payment programs.

This proposed rule would also amend the regulations to allow the adjusted world market value of broken kernels to more accurately reflect its relationship to the world price of whole kernel rice in world markets. This change is being proposed so that the world price formula language will more precisely express the actual method used for calculating the broken kernel world price. Both proposed actions are initiated in accordance with section 101(B)(a)(5)(B) of the Agricultural Act of 1949, as amended.

This proposed rule also amends the regulations to (1) Change the time of announcement by the CCC of the adjusted world price (AWP) and coarse count adjustment (CCA) for upland cotton from 4 p.m. to 5 p.m. eastern time each Thursday and to provide that the AWP and CCA will be effective at the time of announcement; (2) provide that CCC will not accept repayments of price support loans at a rate based on the AWP beginning at 4 p.m. eastern time each Thursday until an announcement of the AWP and CCA for the succeeding weekly period has been made if the AWP for the current week is less than the current crop-year loan level for Strict Low Middling one and one-sixteenth inch (micronaire 3.5 through 3.6 and 4.3 through 4.9, strength 24 through 25 grams per tex) (base quality) cotton plus an amount estimated by CCC to represent average charges plus interest (carrying charges); (3) provide that CCC will not accept applications for loan deficiency payments beginning at 4 p.m. eastern time each Thursday until an announcement of the AWP and CCA for the succeeding weekly period has been made; and (4) clarify the procedures with respect to the additional discretionary adjustment to the AWP and the calculation of the payment rate under the upland cotton user marketing certificate program during the period when both current shipment prices and forward shipment prices are available for growths quoted for Middling 1 3/32 inch cotton, cost, insurance and freight (C.I.F.) northern Europe. These actions are initiated in accordance with section 103B(a) and (b) of the Agricultural Act of 1949, as amended.

Implementation of the changes made by this proposed rule will improve the effectiveness of the price support programs for rice and upland cotton.

DATES: Comments must be received by August 6, 1992, in order to be assured of consideration.

ADDRESSES: Submit comments to: Deputy Administrator, Policy Analysis, USDA, ASCS, room 3090–S, P.O. Box 2415, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Janise Zygmont (regarding cotton) or Gene S. Rosera (regarding rice), Fibers and Rice Analysis Division, USDA, ASCS, room 3756–S, P.O. Box 2415, Washington, DC 20013 or call 202–720–6734.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed under USDA procedures implementing Executive Order 12291 and Departmental Regulation 1512–1 and has been designated as "nonmajor". It has been determined that these program provisions will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, State or local governments or geographical regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the federal assistance programs, as found in the catalogue of Federal Domestic Assistance, to which this notice applies are: Commodity Loans and Purchases—10.051.

It has been determined that the Regulatory Flexibility Act is not applicable since CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of these determinations.

It has been determined by environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

This proposed rule has been reviewed in accordance with Executive Order 12778. The provisions of the proposed rule do not preempt State law, are not retroactive, and do not involve issues which are the subject of administrative appeals.

This provision is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

This amendment will not result in any change in the public reporting burden. Therefore, the information collection requirements of the Paperwork Reduction Act are not applicable to this amendment.

Background

Section 101B(a)(5) (B) of the Agricultural Act of 1949 provides that the Secretary of Agriculture shall prescribe by regulation a formula to define the prevailing world market price for rice and a mechanism by which the Secretary shall announce periodically the prevailing world market price for rice.

Under the present rule, the adjusted world price for rice shall be announced, to the extent practicable, on or after 7 a.m. The announced price is effective at 12:00:01 a.m. of the announcement day. Under this proposed rule, the adjusted world price for rice would be announced on or after 3 p.m eastern time each Tuesday, but may be announced more frequently, as determined by the Secretary. For the purpose of repaying price support loans or calculating loan deficiency payment rates, the adjusted world price announced at this proposed time would be effective upon announcement.

If the proposed announcement time is adopted, CCC would not permit loan repayments or accept applications for loan deficiency payments or lock-ins of rates beginning at 2 p.m. eastern time each Tuesday until the announcement of the adjusted world price for the succeeding weekly period has been made. This one-hour period would provide producers and ASCS staff a time interval between potentially different world price levels. Such interval is considered necessary to reduce confusion over which adjusted world price level applies to any individual loan repayment or loan deficiency payment calculation.

The present rule is inconsistent in expressing how the market value of broken kernel rice is to be determined. Section 1421.25(a)(5)(ii) provides that the market value of broken kernels shall be based upon the estimated domestic market values of all sizes of broken kernels. Section 1421.25 (a)(5)(v)(A)(2) provides that the market value of broken kernels is computed by multiplying the estimated domestic values of all sixes of broken kernels by the estimated national average quantity of broken kernels produced in milling 100 pounds of rice. Further § 1421.25 (a)(5)(vi) also refers to the estimated domestic market value of broken kernel rice. Since the inception of the rice marketing loan program, the world price of broken kernel rice used under sections has been one-half the whole kernel world market price as determined under this section. This value relationship has been consistent with the relative values of whole and broken kernels under the CCC price support program, domestic and export market values, and the provisions at § 1421.25 (a)(5)(ii).

Under this proposed rule, the price relationship between whole and broken kernels would not necessarily be fixed but would be based on the relationship of whole and broken kernel world prices as determined by world market price observations.

The AWP and CCA for upland cotton are currently announced by CCC as soon as possible after 4 p.m. eastern time each Thursday and are in effect from 12:01 a.m. eastern time Friday through midnight the following Thursday. During periods when the AWP is below the loan level but above 70 percent of the loan level, a producer or agent or subsequent agent authorized on CCC Form 605 may (1) Repay the loan amount for one or more bales of cotton pledged as collateral for a loan at the AWP in effect on the day the repayment is received by the county office or authorized Loan Serving Agent that disbursed the loan, or (2) a producer may agree to forgo loan eligibility on one or more bales of cotton and file an application for a loan deficiency payment on such bales at a payment rate equal to the amount that the AWP is below the loan level.

Under this procedure a loan may be repaid or an application for a loan deficiency payment may be filed on Thursday afternoon after the loan repayment rate or loan deficiency payment rate for the following week is known but before such rates become effective. If the AWP is increasing for the following week, having this knowledge in advance of the effective time of new rates permits transactions to be conducted that afternoon that might not otherwise have been conducted thereby providing an advantage to those persons having this knowledge. On the other hand, if the AWP is decreasing for the following week, transactions may be delayed until the following day to obtain additional program benefits. Furthermore, under the current procedures, producers in time zones west of the eastern time zone have an additional one, two or three hours in which to repay their loans or file an application for a loan deficiency payment. This creates inequities between producers in different time zones, particularly during periods when the additional discretionary AWP adjustment under § 1427.25(c)(4) is applicable.

A situation whereby the industry knows the AWP for the subsequent week while the current week's AWP is still in effect is unacceptable to CCC. In an effort to correct the situation, CCC published a proposed rule in the Federal Register on December 31, 1991, (56 FR 67547) proposing to amend the regulations found at 7 CFR part 1427 to change the time of the announcement of the AWP and CCA to 8 p.m. eastern time each Thursday and to make the AWP and CCA effective upon announcement. Fourteen of the fifteen respondents opposed the proposed changes. As a result, CCC announced by press release on April 15, 1992, and in the Federal Register on May 12, 1992, that it was withdrawing the proposed rule but indicated that it intended to publish another proposed rule with respect to these provisions in the near future.

This proposed rule is in response to the announcement to withdraw the proposal. In developing this proposed rule, CCC considered four options, any of which would accomplish the objectives of CCC. Options considered were:

Option 1

Maintain the current time of announcement and effective time of the AWP and CCA but stipulate that, if the AWP for the current week is less than the current crop-year loan level for the base quality of upland cotton plus estimated carrying charges, then (1) Loan repayments at a rate based on the AWP will not be accepted from 4 p.m. eastern time each Thursday until the AWP and CCA for the succeeding weekly period become effective, and (2) applications for loan deficiency payments will not be accepted during the same period.

Most of the respondents to the December 31, 1991, proposed rule recommended continuation of the current time of announcement and effective time of the AWP. This option would continue those procedures but, in order to accomplish the CCC objectives, loan repayments would not be accepted for about 8 hours each Thursday if the AWP for the current week is less than the current crop year loan level plus estimated carrying charges and loan deficiency payment applications would not be accepted during the same period.

Option 2

Announce the AWP and CCA at 5 p.m. eastern time each Thursday and make the AWP and CCA effective upon announcement; stipulate that, if the AWP for the current week is less than the current crop-year loan level for the base quality of upland cotton plus estimated carrying charges, then (1) loan repayments at a rate based on the AWP will not be accepted beginning at 4 p.m. eastern time each Thursday until an announcement of the AWP and CCA for the succeeding weekly period has been made, and (2) applications for loan deficiency payments will not be accepted during the same period.

This option would delay the announcement of the AWP and CCA only about 30 minutes beyond the

current announcement time since it is usually about 4:30 p.m. eastern time when the announcement is actually made. It also would result in a suspension of loan repayment and loan deficiency payment applications for only about 1 hour.

Option 3

Announce the AWP and CCA at 8 p.m. eastern time each Thursday and make the AWP and CCA effective upon announcement.

This option is the procedure that CCC proposed in the December 31, 1991, proposed rule. Delaying the announcement of the AWP and CCA until 8 p.m. eastern time each Thursday, after all ASCS county offices are closed throughout the United States, and making the AWP and CCA effective upon announcement would accomplish CCC's objectives without necessitating suspension of loan repayments and loan deficiency payment applications. However, respondents to the previous proposed rule indicated that the later announcement time would cause several problems, including a delay in pricing export sales of U.S. cotton to the Far East.

Option 4

Announce the AWP and CCA at 8 a.m. eastern time each Friday and make the AWP and CCA effective upon announcement.

This option was recommended by one respondent to the December 31, 1991, proposed rule. Although the option would accomplish CCC's objectives, a problem could result whenever Friday is a nonworkday because the announcement would not be made until the next workday following the weekend.

Discussion of Changes

After considering the advantages and disadvantages of the four options considered, CCC has determined that it will propose implementations of Option This proposed rule would amend § 1427.19 to provide that, whenever the AWP for the current week is below the current crop-year loan level for the base quality of upland cotton plus estimated carrying charges, repayment of loans at a rate based on the AWP will not be allowed beginning at 4 p.m. eastern time each Thursday until an announcement of the AWP and CCA for the succeeding weekly period has been made. Section 1427.23 would be amended to provide that CCC will not accept applications for loan deficiency payments beginning at 4 p.m. eastern time each Thursday until an announcement of the AWP and CCA for the succeeding weekly period had been made. In addition, § 1427.25(e) would be amended to change the time of announcement of the AWP and CCA to 5 p.m. eastern time each Thursday and to provide that the AWP and CCA will be effective upon announcement.

With respect to the determination of any additional discretionary adjustment under section 1427.25(c)(4), the final rule published in the **Federal Register** on August 23, 1991, (56 FR 41749) did not specify how the U.S. Northern Europe price would be determined during the period when both current shipment prices and forward shipment prices are available. This proposed rule would amend section 1427.25(c)(4) to specify these provisions.

The final rule published in the **Federal Register** on April 20, 1992, (57 FR 14326) with respect to the implementation of the Food, Agriculture, Conservation, and Trade Act Amendments of 1991 was not clear about how the payment rate under the upland cotton user marketing certificate program would be determined during the period when both current shipment prices and forward shipment prices are available. This proposed rule would amend section 1427.107 to clarify these provisions.

Interested persons are invited to submit written comments on the proposed rule changes. Comments must be received by August 6, 1992, in order to be assured of consideration. The comment period is being limited to 15 days so that the provisions of this proposed rule can become effective not later than August 1, 1992, the beginning of the 1992-crop marketing year.

List of Subjects

7 CFR Part 1421

Grains, Loan programs/agriculture, Oilseeds, Peanuts, Price support programs, Reporting and recordkeeping requirements, Warehouses.

7 CFR Part 1427

Cotton, Loan programs (agriculture), Price support programs, Warehouses, Marketing certificate programs.

Accordingly, 7 CFR parts 1421 and 1427 are proposed to be amended as follows:

PART 1421—GRAINS AND SIMILARLY HANDLED COMMODITIES

1. The authority citation for 7 CFR part 1421 continues to read as follows:

Authority: 7 U.S.C. 1421, 1423, 1425, 1441z, 1444f–1, 1445b–3a, 1445c–3, 1445e, and 1446f; 15 U.S.C. 714b and 714c.

2. In § 1421.25, paragraphs (a)(5)(ii), (a)(5)(v)(A)(2), (a)(5)(vi), (a)(6), and (a)(7) are revised to read as follows:

§ 1421.25 Market price repayments.

(a) * * *

(5) * * *

(ii) The price determined in accordance with paragraph (a)(5)(i) of this section shall be adjusted to reflect the market value of the total quantity of whole kernels contained in such milled rice by deducting the world value of broken kernels contained therein, with such value of the broken kernels to be determined by multiplying the quantity of such broken kernels (4% per hundredweight) by the world market value of such broken kernels. The world market value of broken kernels shall be based upon the relationship of whole and broken kernel world prices as estimated from observations of prices at which rice is being sold in world markets.

* * * * *

(v) * * *

(A) * * *

(2) The market value of broken kernels contained in the rough rice, computed by multiplying the estimated world market value of broken kernels by the estimated national average quantity of broken kernels produced in milling 100 pounds of rice;

* * * * *

(vi) The price determined in accordance with paragraph (a)(5)(v) of this section may be adjusted to a whole kernel loan rate basis by deducting the estimated world market value of the total quantity of broken kernels contained in such rice and dividing the resulting value by the estimated national average quantity of milled whole kernels produced in milling 100 pounds of rice.

(6) The adjusted world price for each class for rice, loan rate basis, shall be determined by CCC and shall be announced, to the extent practicable, on or after 3 p.m. eastern time each Tuesday continuing through the last Tuesday of July 1996, but may be announced more frequently, as determined by CCC. In the event that Tuesday is a non-workday, the determination will be made on the next workday, on or after 3 p.m. eastern time. The announced prices will be effective upon announcement and will remain in effect for a period as announced by CCC.

(7) Notwithstanding any other provision of this section, if the adjusted world price for rice is less than the current crop-year loan level plus an amount estimated by CCC to represent average charges plus interest, the repayment of loans and applications for lock-in of loan repayment rates at a rate based on the adjusted world price of

rice will not be accepted from 2 p.m. eastern time each Tuesday until an announcement of the adjusted world price for the succeeding weekly period has been made. In the event that Tuesday is a non-workday, such loan repayments and applications for lock-in of loan repayment rates will not be accepted from 2 p.m. eastern time the next workday until an announcement of the adjusted world price for the succeeding weekly period has been made.

* * * * *

3. In § 1421.29, paragraph (c) is revised and paragraph (g) is added to read as follows:

§ 1421.29 Loan deficiency payments.

* * * * *

(c) The loan deficiency payment rate for a crop shall be the amount by which the price support loan level for the crop exceeds the level at which CCC has announced that producers may repay their price support loans in accordance with § 1421.25. Such rate shall be the amount determined on the day the producer provides a complete request for a loan deficiency payment to the county office. When such request provides that the loan deficiency payment rate shall be based on the date of delivery, and the documentation of delivery indicates the rice was delivered after 3 p.m. eastern time, the loan deficiency payment rate in effect after 3 p.m. eastern time of the delivery date shall be used. In all other cases where the loan deficiency payment rate is based on the delivery date, the payment rate in effect at 12:00:01 a.m. eastern time of the delivery date shall be used.

* * * * *

(g) Notwithstanding any other provision of this section, applications for loan deficiency payments will not be accepted beginning at 2 p.m. eastern time each Tuesday until the announcement of the adjusted world price for the succeeding weekly period has been made. In the event that Tuesday is a non-workday, such applications for loan deficiency payments will not be accepted from 2 p.m. eastern time the next workday until an announcement of the adjusted world price for the succeeding weekly period has been made.

PART 1427—COTTON

4. The authority citation for 7 CFR part 1427 continues to read as follows:

Authority: 7 U.S.C. 1421, 1423, 1425, 1444, and 1444–2; 15 U.S.C. 714b and 714c.

5. Section 1427.19 is amended by adding a new paragraph (h) to read as follows:

§ 1427.19 Repayment of price support loans.

* * * * *

(h) Notwithstanding any other provision of this section, if the adjusted world price for upland cotton, determined in accordance with § 1427.25, is less than the current crop-year loan level for the base quality of upland cotton plus an amount estimated by CCC to represent average charges plus interest, repayment of upland cotton loans at a rate based on the adjusted world price will not be accepted beginning at 4 p.m. eastern time each Thursday until an announcement of the adjusted world price for the succeeding weekly period has been made in accordance with § 1427.25(e). In the event that Thursday is a nonworkday, such loan repayments will not be accepted beginning at 7 a.m. eastern time the next workday until an announcement of the adjusted world price for the succeeding weekly period has been made in accordance with § 1427.25(e).

6. Section 1427.23 is amended by adding a new paragraph (f) to read as follows:

§ 1427.23 Cotton loan deficiency payments.

* * * * *

(f) Notwithstanding nay other provision of this section, applications for loan deficiency payments will not be accepted beginning at 4 p.m. eastern time each Thursday until an announcement of the adjusted world price for the succeeding weekly period has been made in accordance with § 1427.25(e). In the event that Thursday is a nonworkday, such applications for loan deficiency payments will not be accepted beginning at 7 a.m. eastern time the next workday until an announcement of the adjusted world price for the succeeding weekly period has been made in accordance with § 1427.25(e).

7. Section 1427.25 is amended by revising paragraphs (c)(4) and (e) to read as follows:

§ 1427.25 Determination of the prevailing world market price and the adjusted world price for upland cotton.

* * * * *

(c) * * *

(4)(i) The prevailing world market price, as adjusted in accordance with paragraphs (c)(1) through (c)(3) of this section may be further adjusted if it is determined that:

(A) Such price is less than 115 percent of the current crop-year loan level for U.S. base quality cotton, and

(B) The Friday through Thursday average price quotation for the lowest-paid United States growth as quoted for M 1 3/32 inch cotton C.I.F. northern Europe (U.S. Northern Europe price) is greater than the average of the quotations for the preceding Friday through Thursday for the five lowest-priced growths of the growths quoted for M 1 3/32 inch cotton C.I.F. northern Europe.

(ii) During the period when both current shipment prices and forward shipment prices are available for growths quoted for M 1 3/32 inch cotton C.I.F. northern Europe, the U.S. Northern Europe price provided in paragraph (c)(4)(i)(B) of this section shall be determined as follows: Beginning with the week covering the period Friday through Thursday which includes April 15 or, if both the average of the current shipment prices for the preceding Friday through Thursday of the lowest-priced United States growth as quoted for M 1 3/32 inch cotton C.I.F. northern Europe (U.S. Northern Europe current price) and the average of the forward shipment prices for the preceding Friday through Thursday of the lowest-price United States growth quoted M 1 3/32 inch cotton C.I.F. northern Europe (U.S. Northern Europe forward price) are not available during that period, beginning with the first week covering the period Friday through Thursday after the week which includes April 15 in which both the average of the U.S. Northern Europe current price and the average of the U.S. Northern Europe forward price are available, the result calculated by the following procedure:

(A) Weeks 1 and 2: (2 × U.S. Northern Europe current price) + (U.S. Northern Europe forward price) /3.

(B) Weeks 3 and 4: (2 × U.S. Northern Europe current price) + (U.S. Northern Europe forward price) /2.

(C) Weeks 5 and 6: (2 × U.S. Northern Europe current price) + (U.S. Northern Europe forward price) /3.

(D) Week 7 through July 31: U.S. Northern Europe forward price.

(iii) In determining the U.S. Northern Europe price as provided in paragraphs (c)(4)(i)(B) and (c)(4)(ii) of this section:

(A) If quotes for either the U.S. Memphis territory or the California/Arizona territory are not available for any week, the available quotations will be used.

(B) If quotes are not available for one or more days in the 5-day period, the available quotes during the period will be used.

(C) If no quotes are available for either the U.S. Memphis territory or the California/Arizona territory during the Friday through Thursday period, no adjustment will be made.

(iv)(A) The adjustment shall be based on some or all of the following data, as available:

(*1*) The U.S. share of world exports;

(*2*) The current level of cotton export sales and shipments; and

(*3*) Other data determined by CCC to be relevant in establishing an accurate prevailing world market price, adjusted to United States quality and location.

(B) The adjustment may not exceed the difference between the U.S. Northern Europe price, as determined in paragraphs (c)(4)(i) through (c)(4)(iii) of this section, and the Northern Europe price, as determined in paragraph (a) of this section.

* * * * *

(e) The adjusted world price for upland cotton as determined in accordance with paragraph (c) of this section, and the amount of the additional adjustment as determined in accordance with paragraph (f) of this section, shall be announced, to the extent practicable, at 5 p.m. eastern time each Thursday continuing through the last Thursday of July 1996. In the event that Thursday is a nonworkday, the determination will be announced, to the extent practicable, at 8 a.m. eastern time the next workday. The adjusted world price and the amount of the additional adjustment will be effective upon announcement and will remain in effect for a period as announced by CCC.

* * * * *

8. Section 1427.107 is amended by revising paragraph (b) to read as follows:

§ 1427.107 Payment rate.

* * * * *

(b) Notwithstanding the provisions of paragraph (a) of this section, no payment rate shall be established in a week following:

(1) A week in which the adjusted world price, determined in accordance with § 1427.25, exceeds 130 percent of:

(i) The current crop-year loan level for the base quality of upland cotton for payment rates determined in accordance with paragraphs (a)(1)(i) and (ii) and (a)(2)(i) and (iii) of this section;

(ii) succeeding crop-year loan level for the base quality of upland cotton for the payment rate determined in accordance with paragraph (a)(2)(iv) of this section.

(2) A consecutive 10-week period in which the U.S. Northern Europe price (U.S. Northern Europe current price, when applicable), adjusted for the value of any certificate or cash payment issued in accordance with paragraph (a) of this section, exceeds the Northern Europe price (Northern Europe current price, when applicable) by more than 1.25 cents per pound.

* * * * *

Signed at Washington, DC on July 16, 1992.

John A. Stevenson,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 92-17192 Filed 7-21-92; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 230

[Release No. 33-6942, File No. S7-19-92]

RIN 3235-AF51

International Series No. 422; Private Resales of Securities to Institutions

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule amendments.

SUMMARY: The Securities and Exchange Commission ("Commission") today is publishing for comment proposed amendments to rule 144A under the Securities Act of 1933 ("Securities Act" or "Act"). Rule 144A provides a safe-harbor exemption from the registration requirements of the Securities Act for resales of restricted securities to qualified institutional buyers ("QIBs"). The proposed amendments would expand the categories of QIBs to include collective and master trust, legal forms commonly used for the collective investment of pension and other employee benefit plan funds. The proposed amendments also would recognize purchases by an insurance company for separate accounts not required to be registered under the Investment Company Act of 1940 ("Investment Company Act") as purchases for the account of the insurance company. Finally, the amendments would allow the inclusion of U.S. government and similar securities in calculating the amount of securities owned or invested by a particular institutional investor.

DATES: Comments should be received not later than September 1, 1992.

ADDRESSES: Comments should be submitted in triplicate to Johnathon G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Stop 6-9, Washington, DC 20549. Comment letters should refer to File No. S7-19-92. All comments received will be available for public inspection and copying in the Commission's Public Reference Room at the same address.

FOR FURTHER INFORMATION CONTACT: Brent H. Taylor or Michael Hyatte at 202-272-3246, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

On April 23, 1990, the Commission adopted Rule 144A [1] to provide a safe harbor from the registration requirements of the Securities Act for specified resales [2] of restricted or unregistered securities to "qualified institutional buyers," a term defined by the rule.[3] Except for registered broker-dealers, institutions eligible to be QIBs must own or invest on a discretionary basis at least $100 million in eligible securities. For registered broker-dealers, the requisite ownership or investment amount is $10 million. Banks, savings and loan associations, and equivalent foreign institutions must also have a net worth of at least $25 million to be QIBs.

Since the Rule's adoption, over $19 billion of securities relating to 181 issuers have been sold in 184 Rule 144A placements.[4] Of this amount, more than $7.6 billion of securities relating to 118 foreign issuers have been sold in 107 Rule 144A placements, and approximately $11.8 billion of securities relating to 66 U.S. issuers have been sold in 74 Rule 144A placements.

Over $13 billion of debt securities (including convertible debt) and over $6 billion of common and preferred equity securities have been sold in these rule 144A placements.

Although pension and other employee benefit plans are among the categories of institutions enumerated in rule 144A

[1] 17 CFR 230.144A.

[2] Such resales are those made to QIBs acting for their own accounts or for the accounts of other QIBs. Where a QIB ("QIB 1") buys for the account of another QIB ("QIB 2"), the seller and any person acting on behalf of the seller may rely on the representation of QIB 1 in ascertaining whether QIB 2 is indeed a QIB, if such reliance is reasonable.

[3] In an effort to facilitate the identification of QIBs, the Division of Corporation Finance has permitted sellers and persons acting on their behalf to rely on the Qualified Institutional Buyers Directory, published by Standard & Poor's. "As a method for establishing a reasonable belief that a prospective purchaser is a qualified institutional buyer * * *" Standard & Poor's (July 8, 1991).

[4] "Rule 144A placement" refers generally to financing transactions exempt from registration under the Securities Act where the issuer and its intermediaries anticipate resales in reliance on the Rule. Usage of the term is discussed more extensively in the Commission's report to Congress on the Rule. Securities and Exchange Commission, Staff Report on Rule 144A (September 30, 1991) 1-2.

as possible QIBs,[5] two of the legal forms commonly used to invest the funds of these plans, collective trust funds and master trusts, are not currently enumerated as qualifying institutions in the rule. Assets of many employee benefit plans are held and managed through collective trusts, which combine funds of plans of several employers, or master trust, which combine funds of plans that are under the common sponsorship of a single employer (including its affiliates) into a single administrative arrangement. In recognition of these common practices and the fact that the participants in the collective trust and master trusts would be limited to institutions falling into qualifying institutional categories already enumerated in the rule (namely, pension and other employee benefit plans), the Commission proposes to expand the QIB categories to include these two types of investment vehicles. Specifically, the amendments proposed today would add collective trust funds used for the investment of the funds of corporate-sponsored employee benefit plans and state-sponsored benefit plans and master trust for the commingled investment of funds of a single employer's employee benefit plans as types of entities that can qualify as a QIB.

A second change to the definition of QIB, proposed in response to questions regarding the status of purchases by an insurance company for its unregistered separate accounts,[6] would specify that sales to a QIB insurance company for its unregistered separate accounts can qualify under rule 144A.

Finally, the Commission proposes to amend the rule to permit institutions to include U.S. government securities in the amount of securities held or invested. Based on its experience with the rule, such exclusion appears to have created inordinate complexity and inefficiency in applying the rule, and does not appear necessary to assure that QIBs include only sizable institutions experienced in securities investing.

II. Specific Proposals

A. Collective Trust Funds and Master Trust Funds

In order to reduce administrative burdens and costs, trustees (generally banks) oftentimes pool assets in their trusts into a collective arrangement which provides for common management of funds. These collective trust arrangements differ based upon the nature of the assets being pooled and the participants, and may receive differing treatment under the U.S. federal tax and securities laws. Although terminology within the banking industry varies, the term "collective trust fund" (also called a "collective investment fund") is generally used to refer to a trust fund whose assets consist of funds from multiple pension plans or other employee benefit plans of more than one employer. A "master trust" is essentially the same as a collective trust fund except that all of the participant plans are under the common sponsorship of a single employer, including its affiliates. These collective trust funds and master trust funds are to be distinguished, for purposes of the rule, from "common trust funds" (or "common trusts"), trusts for individual accounts in which a bank is serving as trustee, executor, guardian, administrator or custodian under a Uniform Gift to Minors Act. Trust maintained for the benefit of individuals may participate in common trust funds.[7]

Currently under the rule the only trust form specifically listed as a qualifying institution is the "Massachusetts or similar business trust," [8] a term that does not include the ordinary common law trust. Employee benefit plans within the meaning of ERISA [9] are qualifying institutions under the rule.[10] However, collective and master trusts set up to facilitate the investments of such plans are not specifically listed and so might arguably not qualify as eligible institutions. If this is so, for such a trust to be a QIB, each participating pension or benefit plan would have to own or invest at least $100 million in securities. While many participating plans do individually qualify, it is quite common for smaller plans to be included in collective trust funds with larger plans.

1. Collective Trust Funds

Collective trust funds are a significant means of investing both private and government pension and other employee benefit funds. In the exercise of fiduciary powers authorized by the Comptroller of the Currency ("OCC"), a national bank may make collective investments for a funds consisting solely of the assets of retirement, pension, profit-sharing, stock bonus, or other tax-exempt funds.[11] Equivalent powers may be held by state-chartered banks,[12] which are substantial participants in the administration of such funds.[13] As a result of the interplay between the regulations of the OCC, federal tax laws and regulations, and the federal securities laws and regulations, participants in collective trust funds essentially must be limited to corporated sponsored tax-qualified employee benefit plans and state and local plans. In 1990, 331 such funds each owned or invested more than $100 million in securities; total securities investments of these exceeded $234 billion.[14]

2. Master Trusts

The use of master trusts by large employers is commonplace. A survey published in December 1991 showed that there were at least 29 banks and trust companies providing their master trust services to 1,279 clients with total master trust assets exceeding $870 billion.[15] The master trust device allows for the collective administration of numerous and diverse individual plans sponsored by a single employer. The single administrative device simplifies the conduct of the multiple plans, prevents duplication of effort and expense, and creates economies of scale. The larger size of the master trust taken as a whole also allows greater diversification of investment, a clear benefit to the multiple employee plans included within the trust and their participants.

Multiple ERISA plans, rather than a single plan for all employees, are maintained for commercial reasons unrelated to any regulatory concern

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[5] 17 CFR 230.144A(a)(1)(i) (D) and (E).

[6] Separate accounts registered under the Investment Company Act (15 U.S.C. 80a–1) are investment companies and so are already eligible entities through rule 144A(a)(1)(i)(B). Registered separate accounts may also be eligible through 144A(a)(1)(iv), for families of investment companies.

[7] Common trusts are not limited to the participation of pension and employee benefit plans or other institutional forms. Common trust funds are described in the Securities Act, section 3(a)(2), 15 U.S.C. 77c(a)(2), and in the Comptroller of the Currency's regulations, 12 CFR 9.18(a)(1). This type of commingled trust is used for the collective administration and investment of assets contributed by the bank acting as trustee or in another fiduciary capacity for an existing trust arrangement. As was previously mentioned, beneficiaries of the subordinate trusts or other fiduciary arrangements participating in a common trust could include individuals.

[8] 17 C.F.R. 230.144A(a)(1)(i)(G).

[9] Employee Retirement Income Security Act of 1974, Pub. L. No. 93–406, 88 Stat 829 (codified principally in 29 U.S.C. 1001–1461).

[10] 17 C.F.R. 230.144A(a)(1)(i)(E).

[11] 12 CFR 9.18(a)(2).

[12] *See, e.g.*, N.Y. Banking Law Sections 94, 96–c, 100 (McKinney 1990); Cal. Fin. Code section 1500.1 (West 1989); Ill. Ann. Stat. ch. 17, sections 311–7(d), 1552–9 (Smith-Hurd 1991).

[13] As of December 31, 1990, eight of the fifteen largest collective investment fund operations were managed by state-chartered banks. Federal Financial Institutions Examination Council, Trust Assets of Financial Institutions—1990 (1991) 83.

[14] Source: FDIC.

[15] 1991 Master and Directed Trust Services Directory, Pension World, December 1991 at 36.

under the Securities Act. The several plans within a master trust ordinarily will provide different benefits for employees of different subsidiaries, for employees of different classes, or for employees in different locations. In addition, an employee may wish to continue a separate plan in its independent form in light of the possibility that the related business is itself sold, a technique that simplifies the transfer of the obligations of that business.

Although it may be possible for an employer to combine all of the plans constituting a master trust into a single plan, an employer's business reasons for conducting its employee benefit program in multiple ERISA plans are irrelevant to the concerns of the Securities Act. If constituted in a single plan, plans now administered through a master trust would be in a legal form clearly eligible to be a QIB.[16] Accordingly, if a master trust composed of such plans under common sponsorship owns or invests at least $100 million in securities, the master trust should be recognized as a QIB.

Both collective and master trusts would be encompassed in new paragraph (F) of the rule. To distinguish collective and master trusts that invest on behalf of institutional investors (specifically, pension plans and other employee benefit plans) from other trust forms that may invest on behalf of individuals (such as common trusts), the proposed definition recognizing collective and master trusts as prospective QIBs refers only to those trusts whose participants are employee benefit plans otherwise described as QIB-eligible entities within the rule. Specifically excluded, however, are plans whose assets include funds for individual retirement accounts and H.R. 10 (Keogh) plans.

B. Unregistered Insurance Company Separate Accounts

The lack of express recognition in rule 144A of a QIB insurance company's ability to purchase securities under the rule that it allocates to its unregistered separate accounts may have inhibited to some extent insurance company participation in the rule 144A market and deprived the account participants of investment opportunities. The proposals will amend the rule with the addition of a note to rule 144A(a)(1)(i)(A) reciting that an insurance company purchasing under the rule for a separate account (or accounts) not required to be registered under the Investment Company Act is deemed to be purchasing for the insurance company's own account.

Assets in separate accounts, which are used as funding mechanisms for employee benefit plans,[17] are segregated from the other assets of the insurance company and are not chargeable with liabilities arising from any other business the insurer may conduct.[18] Nevertheless, under the Investment Company Act [19] (with respect to registered separate accounts) and under state law, the sponsoring insurance company is usually deemed to be the owner of the assets of the separate account.[20] Accordingly, viewing the assets in unregistered separate accounts as assets of the insurance company in the context of rule 144A would not be inconsistent with the treatment of separate accounts under the Investment Company Act and state law.

C. Inclusion of U.S. Government Securities

In reproposing and adopting rule 144A, the Commission rejected the use of asset size as an appropriate criterion for qualification in favor of a size-of-securities portfolio as a better indicator of investment sophistication and expertise. Describing the test, the adopting release stated that, "[g]enerally, any instrument that, but for specific exemption, would have to be registered with the Commission under the Securities Act would be treated as a security for this purpose."[21] At the same time, the adopted rule excluded "securities issued or guaranteed by the United States or by any person controlled or supervised by and acting as an instrumentality of the Government of the United States pursuant to authority granted by the Congress of the United States.[22]

The ineligibility of U.S. government and similar securities has caused inordinate complexity and inefficiency in applying the rules. Not only does the exclusion require specific knowledge of the composition of a purchaser's portfolio, but also the distinctions made among various securities appear somewhat idiosyncratic. For example, excluded government securities include those issued or guaranteed by the Department of Housing and Urban Development, the Government National Mortgage Association, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, and the Student Loan Marketing Association.[23] At the same time, a collateralized mortgage obligation backed by such securities may be included toward the qualifying amount because the obligation is a security distinct from the ineligible securities.

III. Request for Comments

Any interested person wishing to submit written comments on the proposed amendments to rule 144A, as well as other matters that might have an impact on the proposal, is requested to do so.

IV. Summary of Initial Regulatory Flexibility Analysis

An Initial Regulatory Flexibility Analysis in accordance with 5 U.S.C. 603 has been prepared concerning the proposed amendments. The analysis notes that the proposed amendments are intended to recognize several legal forms commonly used for institutional participation in the securities markets, in particular those forms used for the investment of pension and other employee benefit funds.

The proposed amendments will not result in any significant increase in reporting, recordkeeping or compliance requirements. No alternatives to the proposed amendments consistent with their objectives were found.

A copy of the analysis may be obtained by contacting Michael Hyatte, Division of Corporation Finance, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

V. Cost-Benefit Analysis

To evaluate fully the benefits and costs associated with the proposed amendments, the Commission requests views and data estimating the effect of the proposed amendments on transactions under the Rule.

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[16] 17 CFR 230.144A(a)(1)(i)(E).

[17] These separate accounts do not register as investment companies because section 3(c)(11) of the Investment Company Act excludes from the definition of "investment company" any insurance company separate account that funds only specified kinds of governmental or tax-qualified employee benefit plans. In contrast, separate accounts not funding such employee benefit plans are generally required to register as investment companies. *Prudential Insurance Company of America* v. *SEC*, 326 F.2d 383 (3d Cir. 1963), *cert. denied* 377 U.S. 953 (1964).

[18] See generally K. Black and H. Skipper, Life Insurance (11th ed., 1987); Roth, Krawczyk and Goldstein, Reorganizing Insurance Company Separate Accounts, 46 Bus. Law. 537 (1991).

[19] 15 U.S.C. 80a.

[20] Black and Skipper, supra n. 18, at 553.

[21] Securities Act Release No. 6862 (April 23, 1990) [55 FR 17933, 17938].

[22] 17 CFR 230.144A(a)(2).

[23] UNUM Life Insurance (November 21, 1990).

VI. Statutory Basis for Proposals

Rule 144A is proposed to be amended by the Commission pursuant to sections 2(11), 4(1), 4(3), and 19(a) of the Securities Act of 1933.

List of Subjects in 17 CFR Part 230

Reporting and recordkeeping requirements, Securities.

VII. Text of Proposals

In accordance with the foregoing, title 17, chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. The authority citation for part 230 is revised by adding the following citation:

Authority: 15 U.S.C. 77b, 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78*l*, 78m, 78n, 78o, 78w, 78*ll*(d), 79t, 80a–8, 80a–29, 80a–30, and 80a–37, unless otherwise noted. Section 230.144A is also issued under 15 U.S.C. 77b and 77j.

2. Section 230.144A is amended by adding a Note following paragraph (a)(1)(i)(A); removing the words "of 1940 (the Investment Company Act)" in paragraph (a)(1)(i)(B); redesignating paragraphs (a)(1)(i)(F) through (a)(1)(i)(H) as paragraphs (a)(1)(i)(G) through (a)(1)(i)(I); adding paragraph (a)(1)(i)(F); and removing the phrase "securities issued or guaranteed by the United States or by any person controlled or supervised by and acting as an instrumentality of the Government of the United States pursuant to authority granted by the Congress of the United States;" following the colon in paragraph (a)(2) to read as follows:

§ 230.144A Private resales of securities to institutions.

* * * * *

(a)(1) * * * (i) * * * (A) * * *

Note: A purchase by an insurance company for one or more of its separate accounts, as defined by section 2(a)(37) of the Investment Company Act of 1940 (the "Investment Company Act"), which are neither registered under section 8 of the Investment Company Act nor required to be so registered, shall be deemed to be a purchase for the account of such insurance company.

* * * * *

(F) Any trust fund maintained by a bank whose participants are exclusively plans of the types identified in subparagraph (D) or (E), except trust funds that include as participants individual retirement accounts or H.R. 10 plans.

Dated: July 16, 1992.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–17193 Filed 7–21–92; 8:45 am]

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17 CFR Parts 230, 239, 240 and 249

[Release No. 33–6943, 34–30930; File No. S7–20–92]

RIN 3235–AD67

Simplification of Registration Procedures for Primary Securities Offerings

AGENCY: Securities and Exchange Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Securities and Exchange Commission ("Commission") today is publishing for comment proposed revisions to rules and forms under the Securities Act of 1933 ("Securities Act") and Securities Exchange Act of 1934 ("Exchange Act") designed to provide issuers greater flexibility and efficiency in accessing the public securities markets. The proposals would expand the availability of Form S–3, the short-form registration statement under the Securities Act, to additional issuers and classes of transactions. The proposed revisions to Form S–3 would result in the extension of Rule 415, the shelf registration rule, to a greater variety of offerings, including investment grade assetbacked securities. Today's initiatives also include proposals that would permit shelf registration of debt, equity and other securities without a specific allocation of offering amounts among the classes of securities being registered; provide for immediate effectiveness of Form S–3 registration statements for dividend and interest reinvestment plans; and revise Rule 430A to permit specified price and volume changes to be made after effectiveness without the filing of a post-effective amendment. The initiatives also would revise the prospectus filing rule, Rule 424, to accommodate the timing constraints in filing prospectus supplements used in connection with offerings of mortgage-related and investment grade asset-backed securities; and streamline the registration of securities on Form 8–A under the Exchange Act.

DATES: Comments should be received on or before September 1, 1992.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments letters should refer to File No. S7–20–92. All comments letters received will be made available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Meredith B. Cross at (202) 272–2573, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission today is proposing amendments to Form S–3 [1] under the securities Act.[2]. The proposed amendments would increase the classes of issuers and transactions eligible to use that registration statement form and consequently the shelf registration offering procedures of Rule 415,[3] and permit eligible issuers to register debt, equity and other classes of securities on a single shelf registration statement without a specific allocation of offering amounts among the listed classes of securities being registered. A revision to Rule 457,[4] the fee calculation rule, to implement this proposed registration procedure also is being proposed. Revisions to Form S–3 and Rule 462 [5] are being proposed to permit registration statements on Form S–3 for dividend and interest reinvestment plans to be automatically effective upon filing with the Commission. The Commission also is proposing to amend Rule 430A [6]o permit specified price and volume changes to be made after effectiveness without the need to file a post-effective amendment. Further, an instruction to the prospectus filing rule, Rule 424, [7] is proposed that would allow prospectus supplements containing pricing and other transaction specific information with respect to mortgage-related and investment grade asset-backed offerings to be filed no later than two business days following first use, rather than two business days following the earlier of pricing or first use, as is now required for most offerings. Finally, the Commission is proposing amendments to Form 8–A,[8] the short-form used to register securities under section 12 of the Exchange Act,[9] and Rule 12b–23 [10]

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[1] 17 CFR 239.13.

[2] 15 U.S.C. 77a *et seq.*

[3] 17 CFR 230.415.

[4] 17 CFR 230.457.

[5] 17 CFR 230.462.

[6] 17 CFR 230.430A.

[7] 17 CFR 230.424.

[8] 17 CFR 249.208a.

[9] 15 U.S.C. 68*l*(g).

[10] 17 CFR 240.12b–23.

to permit limited information about the terms of the securities to be incorporated by reference from prospectus supplements filed after the effective date.

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I. Executive Summary

The Commission today is proposing several initiatives designed to further streamline the process of registering securities for sale to the public. These initiatives, intended to provide issuers greater flexibility and increase efficiency in raising capital from the public securities markets, recognize and build on the success of the integrated disclosure system and shelf registration process adopted 10 years ago.

The proposals expand the classes of companies that would be eligible to register primary offerings based on the size of the public float or the investment grade rating of the securities on Form S–3, the short-form registration statement. Specific provision would be made for asset-backed securities, including pools of small business loans. To implement these initiatives, three principal changes to the Form S–3 eligibility requirements are proposed. First, the reporting history necessary to register on Form S–3 would be reduced from 36 to 12 months for most issuers. Second, the aggregate market value of the issuer's voting stock held by non-affiliates (referred to as the "public float") qualifying an issuer for use of Form S–3 for any of its securities would be reduced from $150 million to $75 million, and the 3 million share trading volume test would be eliminated. Under these two proposals, an estimated 450 additional issuers with an aggregate public float of approximately $88 billion would become eligible to use Form S–3. Third, Form S–3 would be revised to specifically provide for registration of investment grade asset-backed securities offerings without regard to whether the issuer has a reporting history. If this proposal had been in effect in calendar year 1991, an estimated $48 billion of investment grade asset-backed securities offerings could have been registered on Form S–3.

These proposed changes to Form S–3 would result in increased availability of shelf registration for the newly eligible offerings. Issuers eligible to use Form S–3 for primary offerings are permitted to register securities prior to any planned offering and offer these securities after effectiveness in one or more tranches without any additional pre-offering clearance from the Commission.[11] During calendar year 1991, approximately 370 companies registered approximately $200 billion of debt, preferred stock and other securities on Form S–3 for delayed primary shelf offerings. In addition, the Form S–3 revisions would extend shelf registration to all investment grade asset-backed offerings, a financing benefit already available to issuers of mortgage-related securities.[12] This proposal would thus reduce costs of securitization of small business loans as well as other financial assets.

To provide additional flexibility and facilitate the use of shelf registration for delayed offerings of common stock, the proposals would permit a Form S–3 eligible company to register debt, equity and other securities on a single shelf registration statement, without having to specify in the registration statement the amount of each class of securities to be offered. Under this proposal, a Form S–3 eligible company would specify an aggregate dollar amount of securities to be offered under the registration statement and the categories of securities that may be offered. Any combination of the disclosed securities up to the aggregate dollar amount registered could be taken off the shelf.

The proposals also include a revision to Form S–3 and Rule 462 to permit Form S–3 registration statements covering dividend and interest reinvestment plans to become effective automatically upon filing with the Commission. This treatment would be consistent with the current treatment of post-effective amendments for such offerings.

[11] See Rule 415(a)(1)(x).

[12] See Rule 415(a)(1)(vii).

The initiatives include a proposal designed to enhance the utility of Rule 430A, a rule adopted by the Commission in 1987 to eliminate the need to file most pre-effective pricing amendments.[13] Rule 430A would be revised to permit changes in the offering price and decreases in the amount of the securities offered to be reflected after effectiveness in the final prospectus without the need to file a post-effective amendment so long as such changes would not materially change the disclosure contained in the effective registration statement.

Further, a proposed revision to Rule 424(b), the prospectus filing rule, would codify a staff interpretive position that permits issuers of collateralized mortgage obligations to file prospectus supplements containing price and other offering information two business days following first use, rather than two business days following the earlier of pricing or first use as is now generally required.[14] This proposal also would extend to issuers of other types of mortgage-related and investment grade asset-backed offerings.

Finally, a proposed revision to Form 8–A, the Exchange Act short-form registration statement, would eliminate the need to file with the Commission an amendment to that form to provide pricing information relating to the terms of the securities prior to effectiveness. This information would be incorporated by reference from a subsequently filed prospectus.

II. Initiatives to Simplify the Registration Process

A. Proposals Relating to Form S–3 Registration Statement

1. Background

Under the integrated disclosure system, the disclosure requirements under the Securities Act and the Exchange Act are integrated so that one set of disclosure rules applies under both Acts.[15] This disclosure system is based on the premise that investors purchasing securities in offerings registered under the Securities Act and secondary market purchasers should have access to the same basic

[13] See Release No. 33–6714, June 5, 1987 (52 FR 21252).

[14] See Division of Corporation Finance Interpretive Letter to Skadden, Arps, Slate, Meager & Flom regarding "Certain Mortgage Related Securities Under Rule 415(a)(1)(vii) and Prospectus Filing Requirements of Rule 424(b) (2) and (5)" (avail. August 19, 1987).

[15] See Securities Act Release No. 6383 (March 3, 1982) (47 FR 11380) ("Adoption of Integrated Disclosure System").

information package about the issuer of the securities.[16] As a result, the same information about the issuer is required to be included in prospectuses used to sell securities and in periodic reports filed by issuers.

The Securities Act registration forms in the integrated disclosure system, principally Forms S–1, S–2 and S–3, establish three categories of registrants.[17] While the same information is required to be included as a part of the registration statement pursuant to each of these forms, the method of providing the information—whether physically presented in the prospectus, delivered with the prospectus, or incorporated by reference from Exchange Act reports into the prospectus—varies with each category of registrants.

Form S–3 permits maximum reliance upon Exchange Act reports, allowing issuers that qualify to use the form to incorporate information about the issuer into the prospectus by reference from Exchange Act filings, rather than having to reiterate this information in the prospectus or otherwise deliver it to investors.[18] In addition, in a delayed or continuous offering, Form S–3 allows issuers to update the issuer-related prospectus information through incorporation by reference of future Exchange Act filings, rather than through post-effective amendments to the registration statement.[19]

Under the current rules, an issuer may register any primary offering of its securities on Form S–3 if, among other requirements,[20] (1) the issuer has been subject to Exchange Act reporting for at least 36 months and (2) has a public float of at least $150 million, or, alternatively, at least $100 million if the annual trading volume of such stock is at least 3 million shares.[21] An issuer may register specific securities transactions on Form S–3, including a primary offering of investment grade non-convertible debt or preferred stock, without regard to the minimum public float requirement provided the issuer satisfies the 36-month minimum reporting requirement and other registrant criteria.[22] Other offerings, such as secondary offerings of a class of securities currently listed on a national securities exchange or quoted on NASDAQ,[23] rights offerings to shareholders,[24] offerings of securities issuable upon exercise of warrants or upon conversion of other outstanding securities [25] and offerings pursuant to dividend and interest reinvestment plans,[26] also may be registered on Form S–3 whether or not the issuer meets the minimum public float test, provided, among other things, that the issuer meets the 36-month minimum reporting requirement.[27]

Form S–2, which is available to issuers of any size that have been reporting for at least 36 months,[28] allows some reliance upon Exchange Act reports. Issuers that qualify to use the form can choose to either (i) deliver a copy of the annual report to security holders with the prospectus, or (ii) present registrant-oriented information comparable to that required to be included in such annual report in the prospectus; in either case, the more complete registrant information otherwise required to be included is incorporated by reference into the prospectus from the issuer's most recent annual report on Form 10–K.[29] Because Form S–2 does not permit incorporation by reference of future Exchange Act reports, updating amendments requiring Commission action must be filed in ongoing offerings. Form S–1, which is available to all issuers, requires complete disclosure to be set forth in the prospectus—no incorporation by reference is permitted.

In addition to full incorporation by reference, one of the most important benefits associated with Form S–3 eligibility is the ability to conduct delayed offerings under the Commission's Rule 415, which provides for shelf registration.[30] Rule 415 specifies those offerings that may be conducted on a delayed or a continuous basis. Only limited categories of offerings are permitted to be conducted on a delayed (episodic) basis; Rule 415 permits delayed offerings of specified "traditional" shelf offerings,[31] offerings of "mortgage-related securities" [32] and offerings of securities qualified to be registered for a primary offering on Form F–3 [33] or Form S–3.[34] An issuer that is eligible to use Form S–3 and Rule 415 for a delayed offering gains significant flexibility and financing efficiency since it is able to complete the registration of securities prior to the planned offering, and then offer and sell the securities from time to time in response to market and other factors without having to wait for further Commission action.

After ten years of experience through various stages of the business cycle, the integrated disclosure system and shelf registration have achieved their intended effects of providing issuers efficient access to the public securities markets without compromising investor protection, with about $200 billion of securities registered on Form S–3 for delayed primary offerings during 1991 alone and about $50 billion during the first calendar quarter of 1992. One issuer has used a single shelf registration statement for approximately 500 separate takedowns, and another had approximately 160 separate takedowns off its registration statement. At the same time, improvement in the quality of ongoing Exchange Act reporting, which the Commission cited as a basis for the integrated disclosure system,[35] continues.

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[16] *Id.*

[17] 17 CFR 239.11; 17 CFR 239.12. See also registration statement on Form S–4 which is used to register securities offered in connection with business acquisitions. Comparable registration statements under the "F" series are available to foreign private issuers. No changes to the "F" series forms are being proposed at this time.

[18] See Item 12 of Form S–3.

[19] See *Id.*; and the Item 512(a) undertakings [17 CFR 229.512(a)] applicable to shelf registration statements.

[20] Other form S–3 eligibility requirements include timely filing of Exchange Act filings during the 12 months prior to filing the Form S–3 and the absence of enumerated defaults since the last required audited financial statements. See General Instruction I.A. to Form S–3.

[21] General Instruction I.B.1. of Form S–3.

[22] General Instruction I.B.2 of Form S–3.

[23] General Instruction I.B.3 of Form S–3.

[24] See General Instruction I.B.4 of Form S–3 which permits issuers to engage in rights offerings with its existing shareholders. Consistent with the form's eligibility requirements, where the securities underlying the rights may be acquired by new investors because, for example, the rights are transferable, the issuer may use Form S–3 only if it satisfies the minimum trading float test applicable to primary offerings of equity securities.

[25] *Id.*

[26] *Id.*

[27] Form S–3 also is available to a majority-owned subsidiary if (1) the subsidiary independently satisfies the form's registrant eligibility and transactional criteria, (2) its parent meets such criteria and fully guarantees the principal and interest on the securities, *or* (3) its parent meets registrant eligibility requirement and the securities will be non-convertible investment grade debt or preferred stock. See General Instruction I.C. of Form S–3.

[28] General Instruction I.C. of Form S–2.

[29] See Item 12 of Form S–2.

[30] See Rule 415(a)(1)(x).

[31] The "traditional" shelf offerings that may be conducted on either a delayed or continuous basis include securities that will be offered on behalf of selling security holders (Rule 415(a)(1)(i)), employee benefit or dividend or interest reinvestment plan offerings (Rule 415(a)(1)(ii)), offerings pursuant to outstanding options, warrants or rights (Rule 415(a)(1)(iii)), securities to be issued upon conversion of outstanding securities (Rule 415(a)(1)(iv), securities pledged as collateral (Rule 415(a)(1)(v)), securities registered in connection with ADR facilities (Rule 415(a)(1)(vi)) and securities to be issued in business combination transactions (Rule 415(a)(1)(viii)).

[32] Rule 415(a)(1)(vii).

[33] 17 CFR 239.33.

[34] 17 CFR 230.415(a)(1)(x).

[35] *See* Securities Act Release No. 33–6235 (September 16, 1980) (45 FR 63693).

2. Proposed Revisions to Form S–3

a. *Registrant Requirements—Reporting History.* The proposals would shorten from 36 to 12 months Form S–3's minimum issuer reporting requirement for all offerings of non-asset-backed securities.[36] Under this change, an issuer that had been subject to reporting for at least 12 months prior to filing its registration statement, and had timely filed all required reports during the 12 months prior to filing, would be eligible to use Form S–3 if applicable transaction requirements were met.[37] This change would apply to all offerings of non-asset-backed securities permitted to be registered on Form S–3, including, for example, primary offerings of debt, equity or other securities (whether or not investment grade), secondary offerings, rights offerings to shareholders and offerings of securities issuable upon exercise of warrants.

The proposed change to the reporting history reflects the nature of offerings registerable on Form S–3. Issuers offering investment grade securities or meeting the public float test [38] should have sufficient market following so that a three-year reporting requirement would not appear to materially enhance the market following of these issuers. Secondary offerings, offerings pursuant to dividend or interest reinvestment plans and offerings of securities underlying rights, warrants and convertible securities have been permitted to be registered on Form S–3 without a public float test since the form was adopted, reflecting the historic availability of Form S–16.[39] The proposals would continue the Commission's traditional treatment of these offerings.

Comment is requested as to whether the proposed 12 month requirement is sufficient, or whether a shorter or longer period, such as two years or the current three years, would be preferable. The specific reasons for the suggested period should be stated.[40]

b. *Transactional Requirements.*

i. Public float requirement. The proposals would reduce the minimum public float eligibility criteria of Form S–3. Under the proposals, an issuer with at least $75 million in voting stock held by non-affiliates would be eligible to use Form S–3 to register any class of its securities, as long as the issuer satisfied the issuer eligibility requirements.[41] The proposal would eliminate the trading volume test for companies with a public float of under $150 million. The Commission requests comment as to whether it should continue the 3 million share trading volume test for some or all of the issuers whose public float is between $75 million and $150 million. If a trading volume test is favored, comment is requested as to whether as different minimum volume, such as 1 million or 2 million shares, is preferred. Should there be a requirement that the voting stock be traded on a national exchange or NASDAQ?

Under the proposals, there would be an estimated 450 additional companies eligible to register primary offerings of all their securities as follows.

S–3 Eligible Issuers on Basis of Public Float and Trading Volume

	Total	NYSE	AMEX	NMS	NASDAQ	Other
Current	1,510	925	77	415	37	56
Additional:						
If $75 million public float and 1 year reporting	449	140	44	190	29	46
If $75 million float, 1 year reporting and retain 3 million share minimum trading volume for $75 to $150 million float	177	55	13	102	5	2

The public float eligibility criteria are proposed based upon an analysis of the trading markets and market following of registrants included in various market capitalization ranges. The proposed criteria are designed to extend the benefits of Form S–3 and shelf registration to a larger class of issuers, while insuring that the investing public has access to sufficient and timely information about the issuers included in the new caregories.

As the above chart illustrates, a large majority of the companies that would become eligible to use Form S–3 for a primary offering under the proposals have securities traded on either a national securities exchange or authorized for inclusion on the NASDAQ National Market System ("NMS"). One indicia of market interest and following of a company is the number of research analysts covering the company. Approximately two-thirds of the estimated newly eligible companies are followed by at least three research analysts.[42] Of the estimated 177 new companies that would become eligible if the 3 million share trading test is retained, approximately 80% are followed by at least three research analysts.

Comment is requested on whether the proposed change in the public float eligibility criteria is appropriate. Would the issuers eligible under the proposed criteria be sufficiently followed by the market to permit incorporation by reference of information from Exchange Act filings to satisfy the prospectus disclosure and updating requirements? Specific comment is requested as to whether the float test should be higher or lower, and, if so, at what level should it be set.

As noted above, if these proposals to expand the availability of Form S–3 are adopted, greater numbers of issuers would become eligible to conduct delayed offerings of equity, debt (including debt that is not investment grade), preferred stock or other securities. Comment also is requested as

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[36] General Instruction I.A.3(a) would be amended to change the current thirty-six calendar month requirement to twelve calendar months.

[37] The proposals would not alter any other registrant requirements set forth in General Instruction I.A. of Form S–3.

[38] See General Instruction I.B.1 of Form S–3 ("Primary Offerings by Certain Registrants") and "b. i. public float requirements" *infra*.

[39] Form S–16 was rescinded in connection with the adoption of the integrated disclosure system. See Securities Act Release No. 6383 (March 3, 1982) (47 FR 11380).

[40] No change is proposed to the 36 month reporting requirement of Form S–2. Issuers eligible to register primary offerings of common stock and non-investment grade debt or preferred stock on this Form do not necessarily include those with substantial market following.

[41] General Instruction I.B.1 ("Primary Offerings by Certain Registrants") of Form S–3 would be amended to change the $150 million minimum requirement to $75 million.

[42] Data concerning analyst following is derived from information obtained from Nelson Publications, the publisher of Nelson's Directory of Investment Research (1992).

to whether the categories of companies proposed to be permitted to conduct delayed offerings is appropriate, or whether the use of shelf registration for delayed offerings should be limited to a specified more limited class of Form S–3 offerings. Commenters that favor different criteria are requested to described such criteria and specifically address whether the same or different standards are appropriate for Form S–3 eligibility and for Rule 415-delayed offering eligibility.

ii. Investment grade non-convertible securities. The Form S–3 eligibility criteria for investment grade securities also is proposed to be amended to substitute the term "non-convertible securities" for the current specific references to nonconvertible debt or preferred stock. This proposal would clarify that other investment grade financing instruments (such as foreign currency or other cash settled derivative securities) could be registered under the investment grade eligibility standard. Consistent with current staff interpretations, Form S–3 also would be amended to clarify that investment grade securities must have the required rating at the time of offer and sale to the public.

iii. Investment grade asset-backed securities. Under the current rules, the benefits of Form S–3 registration and shelf registration for delayed offerings generally are not available to issuers of investment grade asset-backed securities that are not "mortgage-related securites." As a result, for example, investment grade small business loan or credit card receivables trust certificates generally cannot be registered for sale on a delayed basis, since the issuers ordinarily are not eligible to use Form S–3 [43] and non-mortgage, asset-backed securities are not a permitted category in Rule 415. By contrast, mortgage-related asset bascked securities, which may be of comparable character and quality to other investment grade asset-backed securities, are specifically permitted to be offered on a delayed basis under Rule 415, whehter or not registered on Form S–3.[44]

Form S–3 is proposed to be amended to add offerings of investment grade asset-backed securities as an additional category of transactions that may be registered on the form. As proposed, asset-backed securities could be registered on Form S–3 whether or not the issuer has a previous Exchange Act reporting history. The proposed rules do not require a reporting history in light of the limited utility of the information about the issuer that would be provided by an Exchange Act reporting history. Until an asset-backed issuer is formed, raises capital and purchases assets, any information about the issuer that might be included in Exchange Act reports would not appear to be useful to investors. Comment is requested, however, as to whether a reporting history for the depositor, servicer and/or trust should be required, and, if so, for what period.

The proposed eligibility criteria for the registration of asset-backed securities on Form S–3 is intended to reflect current practices in the asset-backed securities markets and to provide sufficient flexibility to accommodate future developments. To qualify, the securities would be required to represent obligations primarily serviced by the Cashflows of a discrete pool of similar assets. The proposed definition would not distinguish between pass-through (i.e. equity) and pay-through (i.e. debt) asset-backed securities. Consequently, both pay-through and pass-through securities, as well as residual or subordinate interests, could be registered on the form if all other conditions were met. Further, the proposed definition would include both whole securities and interest-only or principal-only components of such securities. Moreover, unlike current Form S–3, the legal nature of the issuing entity—whether a trust, limited purpose subsidiary, or other legal person—would be irrelevant to the proposed eligibility analysis. Comment is requested on the proposed definition should the definition be limited to subcategories of asset-backed financing and if so what categories?

Under the proposal, Form S–3 and shelf registration would be available for asset-backed securities with the following two characteristics. First, the payment obligations on the securities must be serviced primarily by the cashflows of a pool of discrete liquidating assets such as small business loans, accounts receivable, notes, installment sales contracts, leases or other assets that by their terms convert into cash within a specified period of time.[45] Structured financings would not be considered asset-backed securities for purposes of the proposed revision to Form S–3 where a substantial portion of the underlying assets are originated by one obligor (including affiliated entities). For example, securities issued by a trust that leases property to one company would not be contemplated by the asset-backed securities definition. Commenters are requested to address whether a specific asset concentration limitation should be set forth in the definition and, if so, what level of asset concentration would be appropriate, e.g. 5%–40%.

Second, the securities must be rated "investment grade" by a nationally recognized statistical rating organization ("NRSRO") at the time of offer and sale to the public. The definition of "investment grade" would be the same as that currently set forth in Form S–3 for other investment grade securities.[46] Under this standard, asset-backed securities would be "investment grade" if, the securities, at the time of offer and sale are rated by at least one NRSRO in one of its generic rating categories which signifies investment grade, typically one of the four highest categories.[47] This standard is proposed

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[43] Although the trusts that are formed to issue such asset-backed securities may be created by S–3 eligible issuers, the trusts generally do not qualify as "majority owned subsidiaries" of such issuers for purposes of Form S–3.

[44] The Secondary Mortgage Market Enhancement Act of 1984, Pub. L. No. 98–440, 98 Stat. 1689 (1984) ("SMMEA") was enacted by Congress to increase the flow of funds to the housing market by removing unnecessary regulatory impediments to the creation and sale of private mortgage-backed securities. An early version of the legislation contained a provision that specifically would have required the Commission to create a permanent procedure for shelf registration of mortgage-related securities. The provision was removed from the final version of the legislation, however, as a result of the Commission's decision to adopt Rule 415, implementing a shelf registration procedure for mortgage-related securities. See H.R. Rep. No. 994, 98th Cong., 2d Sess. 14, reprinted in 1984 U.S. Code Cong. & Admin. News 2827; see also Release No. 33–6499 (November 17, 1983) (48 FR 52889), n. 30 (noting that mortgage-related securities were the subject of pending legislation).

SMMEA added a definition of "mortgage-related security" in section 3(a)(41) of the Exchange Act. The definition requires, *inter alia*, that the securities be rated in one of the two highest statisical rating categories and represent an ownership interest in, or be secured by, notes secured by a first lien interest on real estate. As a result of the relationship between paragraph (a)(1)(vii) of Rule 415 and the SMMEA legislation, the Division generally has required issuers seeking to rely on this provision of Rule 415 to meet the requirements of section 3(a)(41). See Piper Mortgage Incorporated (April 22, 1987); Sears Mortgage Securities Corp. (April 21, 1985).

[45] The assets also may include guarantees, letters of credit, financial insurance or other instruments provided as a credit enhancement for the obligations of the issuer. The type or category of asset to be securitized must be described in the registration statement at the time of effectiveness. A registration statement that merely identifies several alternative types of assets that may be securitized would not meet this proposed criteria.

[46] See General Instruction I.B.2 of Form S–3.

[47] If the securities are not investment grade at the time of offer and sale, a post-effective amendment on Form S–1 could be used with respect to that particular take-down; alternatively the issuer would file a new registration statement with respect to the non-qualifying securities.

since this has been Form S–3's standard for investment grade since its adoption 10 years ago. Comment is requested, however, as to whether the rating standard for asset-backed securities should be more limited, such as requiring that the securities be rated in one of the two highest rating categories, as is currently the case for mortgage-related securities under section 3(a)(41) of the Exchange Act.

Under the proposals, mortgage-related securities could be registered on Form S–3 and, therefore, sold pursuant to Rule 415 if the securities otherwise came within the asset-backed securities definition in Form S–3. As a result, mortgage-related securities that are rated in the top four rating categories, but not the top two rating categories, which are not currently eligible to be sold on a delayed basis, would become eligible. This would provide comparable treatment to all types of asset-backed securities and is otherwise consistent with Form S–3's current approach to other investment grade securities. Comment is requested as to whether it is appropriate to expand the categories of mortgage-related securities that may be registered for shelf offerings in this manner.

In connection with the asset-backed securities proposal, Rule 424(b), the prospectus filing rule, is proposed to be amended to codify a staff interpretive position that permits issuers of collateralized mortgage obligations to file prospectus supplements containing price and other offering information within two business days following first use (or to transmit such supplements by a means reasonably calculated to result in filing by such date), rather than Rule 424(b)'s general rule that the prospectus be filed not later than the earlier of two business days following pricing or first use (or transmitted by a means reasonably calculated to result in filing by such date). This proposed revision also would extend to issuers of other mortgage-related and asset-backed securities.

c. *Majority-Owned Subsidiaries.* Current Form S–3 is available to majority-owned subsidiaries in three circumstances.[48] Under the proposals, General Instruction I.C.3. would be revised to make clear that the Form would be available where an S–3 eligible parent fully and unconditionally guarantees the "payment obligations" on the subsidiary's non-convertible securities being registered. Currently the form refers only to principal and interest obligations. This proposed change would clarify that the form is available to register securities other than traditional debt securities. Comment is requested as to whether it would be appropriate to revise this eligibility criteria as proposed.

d. *Dividend or Interest Reinvestment Plans.* Form S–3 is proposed to be amended to provide for the automatic effectiveness upon filing of a Form S–3 registration statement relating solely to a dividend or interest reinvestment plan. To implement this proposal, Rule 462 also would be amended to provide for such immediate effectiveness. Elimination of the current 20-day waiting period should not adversely affect the quality of disclosure in such filings. In addition, automatic effectiveness upon filing is consistent with the treatment of post-effective amendments for such registration statements under the current rules. Comment is requested on the appropriateness of this change.

e. *Proposal to Permit Form S–3/Shelf Registration of Aggregate Amounts of Securities Without Allocation Among Classes.* While shelf registration of delayed offerings on Form S–3 is permitted for common stock as well as debt and other securities, it has been used almost entirely with respect to senior securities. In calendar year 1991 for example, of the approximately $200 billion of securities registered on Form S–3 for delayed primary offerings, approximately $199.7 billion was for delayed offerings of non-convertible debt or preferred stock, while only $300 million was for delayed offerings of common stock. Similarly, in the first quarter of calendar year 1992, only $118 million of the $50 billion registered for delayed primary offerings was for delayed common stock primary offerings. The limited use of shelf registration for common stock reportedly reflects concerns by registrants about the market effects from the overhang created by such registration, as well concerns that the market would view even a registration statement for possible future sales of common stock as signalling management's view that the price of the stock has reached a peak.

Currently, registration statements are required to specify the amount of securities to be offered. In the case of debt securities offered on a delayed offering shelf registration on Form S–3, the issuer has disclosed a dollar amount of generic debt and indicated various categories of debt securities that may be included. No allocation among the categories of possible debt securities is specified. In the case of common stock or preferred stock, the amount of securities to be offered is specified in terms of the number of shares. The proposed rule would incorporate the practice currently used for investment grade debt registered on Form S–3 to all securities. An issuer registering securities on Form S–3 based on the public float of its voting stock or investment grade rating of the securities being offered would be permitted to disclose the various types of securities covered by the registration statement (both debt and equity), but would not have to identify the specific amount of each category to be offered.[49] The prospectus supplement would specify the amount of the particular security to be offered. In this way, the registrant would be able to offer any category of securities specified in the registration statement up to the total dollar amount registered.[50] Investors would receive the same information as is currently required for any shelf offering. No change is intended with respect to the disclosures necessary in a shelf registration statement with respect to the types of each category of securities being registered. A conforming change to Form S–4 is proposed for shelf acquisition registrations by Form S–3 eligible issuers.

The Commission requests comment on the appropriateness of the proposed change. Comment also is requested as to whether this proposal would in fact encourage the use of shelf registration for those delayed offerings of common stock and convertible securities currently permitted under Rule 415. Further, comment is requested as to whether there are other changes to Rule 415, Form S–3 or other Commission rules that would facilitate the use of shelf registration for delayed offerings of common stock and convertible securities.

B. Proposed Revisions to Rule 430A

To further the efficiencies of Rule 430A the proposals include an amendment to the rule to permit price and volume changes that do not materially change the disclosures in the registration statement to be reflected in the final prospectus without the need to file a post-effective amendment.

Rule 430A permits the omission of specified price-related information from

[48] See n. 25 *supra*.

[49] Proposed new paragraph (*o*) to Rule 457 would specify that the registration fee would be computed on the basis of the maximum offering price of the securities being registered.

[50] In computing the amount available on the registration statement, the dollar amount of each offering would be subtracted from the remaining amount.

the registration statement at the time of effectiveness, provided specific conditions are met. Although not part of the rule, the Commission stated in the Rule 430A adopting release that information about a change in the volume of securities being offered would not be considered information that could omitted in reliance on the rule and disclosed in the prospectus filed pursuant to paragraph (b)(1) or (b)(4) of Rule 424.[51] Under this interpretation, "a decrease in (the) amount (of securities to be offered) generally would require a post-effective amendment."[52] This proposed revision does not change the requirement that an increase in the size of the offering after effectiveness requires a new registration statement.[53]

The Rule 430A adopting release also advised that where the initial public offering price for securities fixed after effectiveness falls outside the bona fide range of the offering price of the securities disclosed in the prospectus at effectiveness, the registrant must file a post-effective amendment to include the price-related information or to update the estimate range.

These interpretive positions have unnecessarily limited the flexibility intended to result from eliminating the requirement to file most pre-effective pricing amendments. Accordingly, the Commission proposes to amend Rule 430A to replace these interpretations with a materiality standard to be used in determining whether a post-effective amendment would be required to reflect a decrease in volume or to update price range information. Under this materiality standard, a post-effective amendment would not be required unless a reduction in volume or a change in the price range would materially change the disclosure included in the registration statement at effectiveness. Examples of situations in which a post-effective amendment would be required include changes to the volume or price that would materially affect the public float after the offering, the use of proceeds, the issuer's financial condition or the control of the issuer.

Specific comment is requested with regard to this proposed revision to Rule 430A. If a standard other than the proposed materiality standard is considered preferable, commenters should specifically described such standard and the reasons for recommending it.

[51] Securities Act Release No. 33-6714 (May 27, 1987).

[52] *Id.* n. 34.

[53] See Rule 413 of Regulation C (17 CFR 230.413).

C. Proposals to Simplify Concurrent Securities Act and Exchange Act Registration

Today's initiatives include proposals to further streamline the registration of securities under the Exchange Act in order to facilitate concurrent Securities Act and Exchange Act registration.[54] Under the proposal, the Exchange Act registration form used in concurrent registration would be amended to permit price-related terms of the securities to be omitted at the time of effectiveness in a manner similar to Securities Act Rule 430A.

Concurrent Exchange Act registration generally may be accomplished through the filing of a Form 8-A short-form registration statement.[55] This form is very brief, consisting of a cover page, a description of the class of securities to be registered, a signature page and certain required exhibits. When common stock is being registered, concurrent registration can be accomplished easily, even when pricing information will be omitted from the Securities Act registration statement at the time of effectiveness, because pricing information is not necessary to complete the Form 8-A[56] Accordingly, in a common stock offering, if Rule 430A or Rule 415 is used, no "pricing amendment" generally would be required under either the Securities Act or the Exchange Act.

By contrast, when the security being registered is one in which the "terms" of the security are established when the securities are priced, such as debt securities or preferred stock, an amendment to the Form 8-A setting forth the pricing information is necessary under the current rules before the Form 8-A can be declared effective.[57] The need for this pricing amendment to the Form 8-A presents logistical and administrative difficulties, and undercuts the efficiencies of Rule 430A and Rule 415.

In order to address this concern, Form 8-A is proposed to be amended to permit the Form 8-A to become effective without the final, price-related terms of the securities. This price-related information would then be incorporated by reference into the Form 8-A from a prospectus or prospectus supplement filed in accordance with current Rule 424(b) under the Securities Act.[58] The proposed amendment would permit the same price-related information that is permitted to be omitted from the Securities Act registration statement at the time of effectiveness in reliance upon Rule 430A to be omitted from the Form 8-A.[59]

Incorporation by reference to the Rule 424(b) prospectus would be permitted under the proposal only in those instances in which price-related terms that are required to be included in the Form 8-A registration statement [60] are not known or are unavailable to the registrant prior to the filing of the Form 8-A. The form would be required to be complete in all other respects; a generic or largely incomplete Form 8-A would not be permitted. The proposed change is not intended to affect the listing, informational or filing requirements imposed by a national securities exchange or registered securities association.

III. Cost-Benefit Analysis

To evaluate the benefits and costs associated with the proposed amendments to Form S-3, Form S-4, Rule 424, Rule 430A, Rule 457, Rule 462, Form 8-A and Rule 12b-23, the Commission requests commenters to provide views and data as to the costs

[54] When securities registered under the Securities Act will be traded on a national securities exchange, section 12 of the Exchange Act requires the class of securities to be registered under the Exchange Act before the securities may begin trading. *See* section 12(a) of the Exchange Act, 15 U.S.C. 78*l*(a). Similarly, the NASDAQ system requires as a condition to inclusion in the system that the securities be section 12 registered.

[55] Form 8-A is available to those issuers that are subject to the reporting requirements of section 13(a) or 15(d) of the Exchange Act. However, to facilitate timely registration under the Exchange Act, the Division of Corporation Finance permits non-reporting registrants to file a Form 8-A prior to the effective date of an initial public offering in order to permit concurrent effectiveness of the Securities Act and Exchange Act registrations. This is permitted because the additional information that would be provided in a Form 10 (the long-form Exchange Act registration form for non-reporting issuers) is included in the concurrent Securities Act registration statement.

[56] The price of common stock is not a "term" of the security required to be described in the Form 8-A.

[57] For example, in an offering of convertible debt securities, the interest rate, the conversion rate, and the call price are terms of the securities that must be included in the Form 8-A, but which are not known until the time of pricing.

[58] A related technical amendment to Rule 12b-23 under the Exchange (17 CFR 240.12b-23) also is proposed. The proposed amendment would except Rule 424(b) supplements filed after effectiveness of a Form 8-A from Rule 12b-23's requirement that information incorporated by reference into an Exchange Act registration statement be included as an exhibit to the registration statement.

[59] Under the proposed amendment to Form 8-A, registrants would be permitted to provide the title of the securities on the cover of the Form 8-A in preliminary form before the securities are priced (e.g., —% debentures due 20—), so that the requirement to provide the title of the securities would not be an impediment to the effectiveness of the Form 8-A prior to pricing.

[60] See Item 1 of Form 8-A, which requires the information specified in Item 202 of Regulation S-K.

and benefits associated with amending the rules and forms to expand the availability of Form S–3 and the resultant extension of Rule 415 to a greater variety of offerings, including investment grade asset-backed securities. Similar comments are requested on the proposals to permit shelf registration of equity, debt and other securities without a specific allocation of offering amounts among the classes of securities being registered; amend Rule 430A to allow non-material price changes and decreases in volume to be made after effectiveness without the filing a post-effective amendment; and to permit limited information regarding the securities to be incorporated by reference into Exchange Act registration statements on Form 8–A from prospectuses filed after effectiveness. Finally, comment is request on the proposal to have registration statements on Form S–3 for dividend or interest reinvestment plans to become effective automatically upon filing with the Commission.

IV. Summary of the Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis ("IRFA"), pursuant to the requirements of the Regulatory Flexibility Act,[61] regarding the proposed rules. The IRFA notes that the proposed amendments are intended to provide issuers greater flexibility and efficiency in accessing the public securities markets. The proposed amendments would not impose any new reporting, recordkeeping or compliance requirements on any entities. No alternatives to the proposed amendments consistent with their objectives and the Commission's statutory mandate were found. It is expected that the overall effect of the proposed rules will provide issuers greater flexibility and increased efficiency in raising capital from the public securities markets. The proposals to reduce the reporting history requirement for use of Form S–3 and the proposed revisions to Rule 430A and Form 8–A, if adopted, could apply to any issuer, including small entities registering securities for public sale. For example, a small entity that has been reporting for at least 12 months but less than 36 months could become eligible to use Form S–3 for the registration of a secondary offering or an offering of securities underlying warrants. To the extent that these proposals have an effect on small entitites, it is believed that the proposals would reduce the compliance burdens associated with Securities Act or Exchange Act registration for such entities, as they would for any other issuer. A copy of the IRFA may be obtained from Meredith B. Cross, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, NW., Mail Stop 3–3, Washington, DC 20549, (202) 272–2573.

V. General Request for Comments

Any interested persons wishing to submit written comments on the proposed rule amendments that are the subject of this release, to suggest additional changes, or to submit comments on other matters that might have an impact of the proposals contained herein, are requested to do so. Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549 and should refer to file number S7–20–92. Comment is requested on the impact of the proposals from the point of view of the public, as well as the entities or persons making filings with the Commission. Comments on this inquiry will be considered by the Commission in complying with its responsibilities under section 19(a) of the Securities Act.[62] The Commission further requests comment on any competitive burdens that may result from adoption of the proposals. Comments on this inquiry will be considered by the Commission in complying with its responsibilities under section 23(a) of the Exchange Act.[63]

VI. Statutory Bases

The amendments to the Commission's rules and forms are being proposed pursuant to the sections 6, 7, 8, 10 and 19(a) of the Securities Act of 1933, as amended, sections 12, 13, 15(d) and 23(a) of the Sécurities Exchange Act of 1934, as amended.

List of Subjects in 17 CFR Parts 230, 239, 240 and 249

Reporting and recordkeeping requirements, Securities.

VII. Text of Proposed Amendments

In accordance with the foregoing, title 17, chapter II of the Code of Federal Regulations is proposed to be amended as follows:

[61] 5 U.S.C. 603 (1988).

[62] 15 U.S.C. 77s(a).

[63] 15 U.S.C. 78w(a).

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. The authority citation for part 230 continues to read as follows:

Authority: 15 U.S.C. 77b, 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78*l*, 78m, 78n, 78*o*, 78w, 78*ll*(d), 79t, 80a–8, 80a–29, 80a–30 and 80a–37, unless otherwise noted.

2. By amending § 230.424 by adding a new Instruction at the end of paragraph (b) to read as follows:

§ 230.424 Filing of prospectuses, number of copies.

* * * * *

(b) * * *

Instruction. Notwithstanding § 230.424(b)(2) and (b)(4) above, a form of prospectus or prospectus supplement relating to an offering of mortgage-related securities on a delayed basis under § 230.415(a)(1)(vii) or asset-backed securities on a delayed basis under § 230.415(a)(l)(x) that is required to be filed pursuant to paragraph (b) of this section shall be filed pursuant to paragraph (b) of this section shall be filed with the Commission no later than the second business day following the date it is first used after effectiveness in connection with a public offering or sales, or transmitted by a means reasonably calculated to result in filing with the Commission by that date.

3. By amending § 230.430A by adding an instruction to paragraph 9a) to read as follows:

§ 230.430A Prospectus in a registration statement at the time of effectiveness.

(a) * * *

Instruction to paragraph (a): A decrease in the volume of securities or change in the bona fide estimate of the maximum offering price range from that contained in the registration statement that is declared effective may be disclosed in the form of prospectus filed with the Commission pursuant to § 230.424(b) or § 230.497(h) under the Securities Act so long as the decrease in volume or change in the price range would not materially change the disclosure contained in the registration statement at effectiveness.

* * * * *

4. By amending § 230.457 by adding new paragraph (o) to read as follows:

§ 230.457 Computation of fee.

* * * * *

(o) Where an issuer eligible to use Form S–3 is registering securities pursuant to General Instruction I.B.1 or I.B.2 to Form S–3 to be offered on a delayed or continuous basis pursuant to § 230.415(a)(1)(x) or in connection with a business combination transaction purusant to § 230.415(a)(1)(viii), the registration fee may be calculated on the basis of the maximum offering price of

all the securities listed in the "Calculation of Registration Fee" Table.

5. By revising § 230.462 to read as follows:

§ 230.462 Effective date of a registration statement filed on Form S–8 and dividend or interest reinvestment plan filed on Form S–3.

A registration statement on Form S–8 (§ 239.16b of this chapter) and a registration statement on Form S–3 (§ 239.13) for a dividend or interest reinvestment plan shall become effective upon filing with the Commission.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

6. The authority citation for part 239 continues to read as follows:

Authority: 15 U.S.C. 77a, *et seq.*, unless otherwise noted.

7. By amending General Instructions I and II to Form S–3 (§ 239.13) by revising the introductory text to paragraphs A. and C.2. of Instruction I; by revising paragraphs A.3.(a), B.1. and B. of Instruction I; by revising the first sentence of paragraphs B.2. and C.3. of Instruction I; by redesignating paragraphs A.4. through A.6. of Instruction I as paragraphs A.5. through A.7. of Instruction I; adding new paragraphs A.4. and B.5 to Instruction I; adding new paragraph C. to Instruction II; and by revising General Instruction III to read as follows:

Note: Form S–3 does not appear in the Code of Federal Regulations.

Form S–3

* * * * *

General Instructions

I. * * *

A *Registrant Requirements.* Registrants must meet the following conditions in order to use this Form for registration under the Securities Act of securities offered in the transactions specified in I.B. below:

* * * * *

3. The registrant:

(a) Has been subject to the requirements of Section 12 or 15(d) of the Exchange Act and has filed all the material required to be filed pursuant to sections 13, 14 or 15(d) for a period of at least twelve calendar months immediately preceding the filing of the registration statement on this Form; and

* * * * *

4. The provisions of paragraph A.3.(a) above do not apply to any issuer registering investment grade asset-backed securities as defined in I.B.5. below.

* * * * *

B. *Transaction requirements.* Security offerings meeting any of the following conditions and made by a registrant meeting the Registrant Requirements specified in I.A. above may be registered on this Form:

1. *Primary offerings by certain registrants.* Securities to be offered for cash by or on behalf of a registrant, or outstanding securities to be offered for cash for the account of any person other than the registrant, including securities acquired by standby underwriters in connection with the call or redemption by the registrant of warrants or a class of convertible securities; *provided* that the aggregate market value of the voting stock held by non-affiliates of the registrant is $75 million or more.

Instruction. The aggregate market value of the registrant's outstanding voting stock shall be computed by use of the price at which the stock was last sold, or the average of the bid and asked prices of such stock, as of a date within 60 days prior to the date of filing. See the definition of "affiliate" in Securities Act Rule 405 (§ 230.405 of this chapter).

2. *Primary Offerings of non-convertible investment grade securities.* Non-convertible securities to be offered for cash by or on behalf of a registrant, provided such securities at the time of the offer and sale are "investment grade securities," as defined below. * * *

* * * * *

5. *Offerings of investment grade asset-backed securities.* Asset-backed securities to be offered for cash, provided the securities are "investment grade securities," as defined in I.B.2. above (Primary Offerings of Certain Non-convertible Securities). For purposes of this form, the term "asset-backed security" means a security the obligations of which are primarily serviced by the cashflows of a discrete pool of receivables or other financial assets that by their terms convert into cash within a finite time period plus any rights or other assets designed to assure the servicing or timely distribution of proceeds to the security holders.

C. * * *

2. The parent of the registrant-subsidiary meets the Registrant Requirements and the conditions of Transaction Requirements B.2. (Primary Offerings of Certain Non-Convertible Securities) are met; or

3. The parent of the registrant-subsidiary meets the Registrant Requirements and the applicable Transaction Requirement, and fully and unconditionally guarantees the payment obligations on the securities being registered, and the securities being registered are non-convertible securities. * * *

II. * * *

* * * * *

C. Where two or more classes of securities being registered on the form pursuant to General Instruction I.B.1 or I.B.2 are to be offered on a delayed on continuous basis pursuant to § 230.415(a)(1)(x), § 230.457(o) under the Securities Act permits the registration fee to be calculated on the basis of the maximum offering price of all the securities listed in the "Calculation of Registration Fee" Table ("Fee Table"). In this event, while the Fee Table would list each of the classes of securities being registered and the aggregate proceeds to be raised, the Table need not specify by each class information as to the amount to be registered, proposed maximum offering price per unit, and proposed maximum aggregate offering price. * * *

III. Dividend or Interest Reinvestment Plans: Filing and Effectiveness of Registration Statement; Request for Confidential Treatment.

A registration statement on this Form S–3 relating solely to securities offered pursuant to a dividend or interest reinvestment plan will become effective automatically (§ 230.462) upon filing (§ 230.456). Post-effective amendments to such a registration statement on this Form shall become effective upon filing (§ 230.464).

* * * * *

8. By amending the General Instructions to Form S–4 (17 CFR 239.25) by adding new paragraph J. to read as follows:

Note: Form S–4 does not appear in the Code of Federal Regulations.

Form S–4

* * * * *

General Instructions

* * * * *

J. Where two or more classes of securities being registered on the form are to be offered on a delayed or continuous basis pursuant to § 230.415(a)(1)(viii), § 230.457(o) under the Securities Act permits the registration fee to be calculated on the basis of the maximum offering price of all the securities listed in the "Calculation of Registration Fee" Table ("Fee Table"). In this event, while the Fee Table would list each of the classes of securities being registered and the aggregate proceeds to be raised, the Table need not specify by each class information as to the amount to be registered, proposed maximum offering price per unit, and proposed maximum aggregate offering price.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

9. The authority citation for part 240 continues to read as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78i, 78j, 78l, 78m, 78n, 78o, 78p, 78s, 78w, 78x, 78ll(d), 79q, 79t, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4 and 80b-11 unless otherwise noted.

10. By amending § 240.12b-23 by revising paragraph (a)(3) to read as follows:

§ 240.12b-23 Incorporation by reference.

(a) * * *

(3) Copies of any information or financial statement incorporated into a registration statement or report by reference, or copies of the pertinent pages of the document containing such information or statements, shall be filed as an exhibit to the statement or report, except that:

(i) A proxy or information statement incorporated by reference in response to Part III of Form 10-K (§ 249.310); and

(ii) A form of prospectus filed pursuant to § 230.424(b) incorporated by reference in response to Item 1 of Form 8–A (§ 249.208a) need not be filed as an exhibit.

* * * * *

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

11. The authority citation for part 249 continues to read as follows:

Authority: 15 U.S.C. 78a, *et seq.*, unless otherwise noted.

12. By amending Form 8–A (17 CFR 249.208a) by revising the instruction to Item 1 to read as follows:

Note: Form 8–A does not appear in the Code of Federal Regulations.

Regulations.

Form 8–A

* * * * *

Item 1. * * *

Instruction. If a description of the securities comparable to that required here is contained in any prior filing with the Commission, such description may be incorporated by reference to such other filing in answer to this item. If such description will be included in a form of prospectus subsequently filed by the registrant pursuant to Rule 424(b) under the Securities Act (§ 230.424(b) of this chapter) this registration statement shall state that such prospectus shall be deemed to be incorporated by reference into the registration statement.

Dated: July 16, 1992.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–17221 Filed 7–21–92; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 131

[Docket No. 91P–0090/CP]

Evaporated Milk; Proposed Amendment of the Standard of Identity

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend the standard of identity for evaporated milk by revising the minimum milkfat and total milk solids content requirements and establishing a minimum milk solids-not-fat content requirement. The proposed amendments are in response to a petition filed by the American Dairy Products Institute (ADPI) and will promote honesty and fair dealing in the interest of consumers.

DATES: Written comments by September 21, 1992. The agency proposes that any final rule that may issue based upon this proposal become effective 60 days after date of publication of the final rule in the **Federal Register.**

ADDRESSES: Submit written comments, data, or information to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Nannie H. Rainey, Center for Food Safety and Applied Nutrition (HFF–414), Food and Drug Administration, 200 C St., SW., Washington, DC 20204, 202–205–5007.

SUPPLEMENTARY INFORMATION: The American Dairy Products Institute, 130 North Franklin St., Chicago, IL 60606, filed a petition on March 12, 1991, requesting that FDA amend the standard of identity for evaporated milk (§ 131.130 (21 CFR 131.130)) to:

(1) Reduce the minimum milkfat content requirement from 7.5 percent to 6.5 percent by weight;

(2) Reduce the minimum total milk solids content requirement from 25 percent to 23 percent by weight; and

(3) Add a minimum milk solids-not-fat content requirement of 16.5 percent by weight.

I. Statement of Grounds

In support of its petition, ADPI stated that nutritionists and health-care professionals are proposing, and consumers are demanding, food products that contain less fat, cholesterol, calories, and sodium. In response to that demand, evaporated milk manufacturers, through this suggested amendment of the standard of identity for evaporated milk, are proposing reductions of 13 percent in fat, 9 percent in calories, and 5 percent in sodium in the food. In addition, ADPI stated that further reductions in the sodium content of evaporated milk will occur as the industry systematically converts from the use of disodium phosphate to dipotassium phosphate for product stabilization.

ADPI also stated that evaporated milk is most closely associated with fluid milk, and that it regularly replaces fluid milk for beverage purposes, food preparation, and other uses. Evaporated milk traditionally has been sold as a safe, convenient milk product that duplicates the composition of fluid milk when diluted with an equal volume of water. It has long been considered to be a 2:1 concentrate of fluid milk. ADPI noted that the current U.S. standard of identity for milk in § 131.110(a) (21 CFR 131.110(a)) specifies a minimum milkfat content of 3.25 percent and a minimum milk solids-not-fat content of 8.25 percent, and that the suggested amendments will provide that the modified evaporated milk will contain twice the milkfat and milk solids-not-fat contents as defined for fluid milk. Thus, the suggested minimum milkfat content for evaporated milk would be 6.5 percent by weight ($2\times3.25=6.5$), and the suggested minimum milk solids-not-fat content would be 16.5 percent by weight ($2\times8.25=16.5$), resulting in a minimum total milk solids content of 23 percent by weight ($6.5+16.5=23$).

ADPI submitted information on three industry research tests as to consumer perception comparing the standardized evaporated milk to evaporated milk manufactured to conform to the suggested amendments. The following is a brief discussion of the tests and the results.

A. Evaporated Milk In-Home Use Test

A nationally representative sample of 400 regular users of evaporated milk were selected from a consumer panel. For the purposes of the survey, a regular user was defined as a female head of a household who claims to have purchased at least two cans of evaporated milk in the past year. Two hundred such consumers were asked to evaluate the attributes of the modified product, and 200 other consumers were asked to evaluate the attributes of standardized evaporated milk. The products were evaluated overall on a 10-point hedonic scale for such attributes as consistency and appearance. In addition, those consumers who used evaporated milk in coffee were asked to evaluate the products for the attributes relating to that purpose. Consumers who used evaporated milk in foods or beverages other than coffee were asked to evaluate the product's performance relating to those purposes.

ADPI reported that, overall, the modified product was rated higher than the standardized evaporated milk by a small but significant margin at the 90 percent confidence level.

B. Evaporated Milk Triangle Test Panel Survey

This taste test was designed to compare products made by identical recipes except that the evaporated milk product used was different. The test

involved 54 panelists the first day and 44 the second day. On the first day red light was used to mask differences in color, and on the second day regular lights were used. Panelists were given samples of each of three recipes: (1) A beverage made with orange soda, (2) pumpkin pie, and (3) fudge. In each case, one sample was the recipe made with standardized evaporated milk, one sample was the recipe made with the modified evaporated milk, and one was made with evaporated milk or with the modified evaporated milk or as to present two identical and one odd sample per recipe. Panelists were asked to taste the samples and select the sample that was different.

ADPT stated that there were no statistically significant distinctions between consumer perception of the products made with the two types of evaporated milk.

C. Evaporated Milk Home Use Test

A sample of 153 consumers were asked to evaluate the performance of the modified evaporated milk versus the performance of standardized evaporated milk in certain recipes and to state an overall preference for one product or the other, as well as to rate the products on overall performance, i.e., performance as to "richness of the dish," "creaminess of the dish," and "influence on flavor of the dish."

According to ADPI, overall, the preferences for one product or the other were identical. Thirty-seven percent of the participants preferred the modified evaporated milk product, and 37 percent of the participants preferred the standardized evaporated milk product. The remaining 26 percent expressed no preference.

ADPI stated that industry experience and the consumer research demonstrate that there is no significant difference in consumers' perception of, or preference for, the standardized evaporated milk versus the modified evaporated milk. Thus, ADPI claimed that the suggested amendments would promote honesty and fair dealing and would not result in required changes in recipes using standardized evaporated milk.

II. The Proposal

In the Federal Register of July 2, 1940 (5 FR 2442 at 2443), FDA stated in the findings of fact that led to the adoption of the standard of identity for evaporated milk that the concentration of evaporated milk is limited by the percent of nonfat milk solids in the finished product. FDA also stated that concentration to a point where the nonfat milk solids is not less than 18 percent is a reasonable degree of concentration which can be and is accomplished by the application of accepted commercial methods of manufacture.

In addition, the findings of fact noted that evaporated milk contained not less than 7.8 percent of milkfat and not less than 25.5 percent of total milk solids according to the advisory standard of identity for evaporated milk that was effective at that time under the Food and Drugs Act of June 30, 1906.

However, the fundings of fact concluded that the proper ratio of nonfat milk solids to milkfat in evaporated milk was about 2.275, based on the ratio of nonfat milk solids to milkfat in the average fluid market milk of the nation. Consequently, FDA established 7.9 percent as a reasonable minimum milkfat content and 25.9 percent as a reasonable total milk solids content in evaporated milk.

In the Federal Register of October 10, 1973 (38 FR 27924), FDA, established a standard of identity for milk that required that milk contain not less than 3.25 percent of milkfat and not less than 8.25 percent of milk solids not fat based on the milkfat content of milk produced by cows in the United States in 1972. In the same issue of the Federal Register (38 FR 27924 at 27925), in view of the compositional changes in cow's milk, FDA decided to reduce the minimum milkfat level of evaporated milk from 7.9 percent to 7.5 percent and the minimum total milk solids requirement from 25.9 percent to 25.5 percent.

Subsequently, in consideration of the acceptance of the recommended international Codex Alimentarius standard for evaporated milk by the United States (43 FR 21668, May 19, 1978), FDA reduced the total milk solids requirement for evaporated milk from 25.5 percent to 25 percent by weight. No change was deemed necessary in the milkfat content of evaporated milk at that time.

The agency believes, in view of the widespread support for Americans to reduce the amount of fat and the number of calories in their diets, that reasonable grounds have been submitted to warrant issuance of a proposal to amend the standard in the manner requested in the petition. It further believes that the suggested amendment is consistent with the intent of the standard of identify for evaporated milk as established in 1940, as well as the subsequent amendments, that require that the milkfat and milk solids-not-fat contents be reasonably related to those of the milk used in the manufacture of evaporated milk. Accordingly, FDA is proposing to amend the standard of identify for evaporated milk in § 131.130(a) by reducing the milkfat content from 7.5 percent to 6.5 percent by weight, reducing the minimum total milk solids content from 25 percent to 23 percent by weight, and establishing a minimum requirement for milk solids not fat of 16.5 percent by weight.

FDA requests comments on these amendments as well as on whether there are other changes in the standard that will assist manufacturers by providing more flexibility but that will also be in the interest of consumers. Suggestions for additional changes in the standard should be supported, where possible, with data on the need for the changes and on the anticipated effects on the food and on consumer acceptance of the product so modified.

III. Economic Impact

FDA has examined the economic implications of the proposed rule to amend the standard of identity for evaporated milk in 21 CFR part 131 as required by Executive Order 12291 and the Regulatory Flexibility Act (Pub. L. 96-354). Executive Order 12291 compels Federal agencies to use cost-benefit analysis as a component of decisionmaking. Public Law 96-354 requires regulatory relief for small businesses, where feasible. Because no marginal costs are expected to be incurred to comply with this proposed regulation, the agency finds that this proposed rule is not a major rule as defined by Executive Order 12291. In accordance with Public Law 96-354, FDA has also determined that this proposed rule will not have a significant adverse impact on a substantial number of small businesses.

FDA is proposing to amend the standard of identity for evaporated milk by lowering the minimum milkfat and total milk solids content requirements and establishing a minimum milk solids-not-fat content requirement consistent with the lower values. This provision will result in a product that continues to reflect the 2:1 level of concentration of evaporated milk compared to fluid whole milk. The lower values for the minimum milkfat content and minimum total solids content will not significantly affect the use of this product in recipes. Because these are minimum levels, manufacturers may continue to process evaporated milks using current formulations. Thus, no changes are required in formulations unless manufacturers wish to reformulate their products.

If evaporated milk products are not reformulated, manufacturers would continue to produce products that are not precisely formulated to yield a 2:1

concentrate and thus would incur slightly higher production costs. Another option is to remove the evaporated milk standard and to allow manufacturers to use any combination of milkfat and nonfat milk solids levels in their evaporated milk products. There is no evidence that this option would be in the best interest of consumers or of manufacturers. In the absence of a Federal standard for evaporated milk, the States could establish standards with different requirements which could hinder interstate commerce. Uniform standards protect consumers from unfair trade practices and also enable manufacturers to compete in an equitable manner.

The benefits of the selected option, to propose to amend the standard as requested by ADPI, will be to continue to provide consumers with an evaporated milk product that is a 2:1 concentrate of fluid milk. It will ensure that evaporated milk products also contain a minimum level of milk solids not fat. It will also allow for the production of an evaporated milk that contains less milkfat and total milk solids than in permitted under the current standard of identify.

If FDA adopts this proposal, firms will not required to change existing labels. Thus, FDA finds that there are no marginal costs for this proposed amendment of the standard of identify for evaporated milk. Therefore, in accordance with section 605(b) of Public Law 96–354, FDA has also determined that this proposed rule will not have a significant adverse impact on a substantial number of small businesses.

IV. Environmental Impact

The agency has determined under 21 CFR 25.24(b)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

V. Request for Comments

Interested persons may, on or before September 21, 1992, submit to the Docket Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 131

Cream, Food grades and standards, Milk, and Yogurt.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and relegated to the Director, Center for Food Safety and Applied Nutrition, it is proposed that 21 CFR part 131 be amended as follows:

PART 131—MILK AND CREAM

1. The authority citation for 21 CFR part 131 continues to read as follows:

Authority: Secs. 201, 401, 403, 409, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 343, 348, 371, 376).

2. Section 131.130 is amended by revising paragraph (a) to read as follows:

§ 131.130 Evaporated milk.

(a) *Description.* Evaporated milk is the liquid food obtained by partial removal of water only from milk. It contains not less than 6.5 percent by weight of milkfat, not less than 16.5 percent by weight of milk solids not fat, and not less than 23 percent by weight of total milk solids. Evaporated milk contains added vitamin D as prescribed by paragraph (b) of this section. It is homogenized, it is sealed in a container and so processed by heat, either before or after sealing, as to prevent spoilage.

* * * * *

Dated: July 10, 1992.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 92–17182 Filed 7–21–92; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[PS–7–92]

RIN 1545–AQ46

Continuity of Life–Limited Partnerships

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations that amend the regulations under section 7701 of the Internal Revenue Code relating to the classification of organizations for tax purposes. The proposed regulations clarify the rule in the regulations regarding the characteristic of continuity of life of a limited partnership. These proposed regulations are proposed to be effective for taxable years beginning 30 days after the date of publication of these regulations in final form.

DATES: Written comments and requests to speak (with an outline of oral comments) at the public hearing must be received by September 29, 1992. The public hearing is scheduled to be held on October 20, 1992. See notice of hearing published elsewhere in this issue of the **Federal Register.**

ADDRESSES: Send comments and requests to speak (with an outline of oral comments) at the public hearing to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:Corp:T:R (PS–7–92), room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Concerning the hearing, Bob Boyer, Regulations Unit (202) 377–9231 (not a toll-free number); concerning the regulation, James A. Quinn, (202) 566–3158 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed regulations that amend part 301 of title 26 of the Code of Federal Regulations. The proposed regulations clarify the rule in 26 CFR 301.7701–2(b)(1) regarding the characteristic of continuity of life of a limited partnership.

Explanation of Provisions

For federal tax purposes, organizations may be classified as associations (which are taxable as corporations), partnerships, or trusts. Section 7701(a) (2) and (3) of the Code and §§ 301.7701–1 through 301.7701–4 of the regulations set forth the tests, or standards, that are to be applied in determining the tax classification of unincorporated organizations. Section 301.7701–2 provides that the classification of an unincorporated organization as a partnership or an association depends upon whether an organization possesses the relevant corporate characteristics of continuity of life, centralization of management, limited liability, and free transferability of interests.

Section 301.7701–2(b) of the regulations provides rules for determining whether an organization has continuity of life. For limited partnerships, the third sentence of § 301.7701–2(b)(1) states that if the retirement, death, or insanity of a general partner of a limited partnership causes a dissolution of the partnership, unless the remaining general partners

agree to continue the partnership or unless all remaining members agree to continue the partnership, continuity of life does not exist.

In order to clarify this rule, the third sentence of § 301.7701–2(b)(1) is revised to specifically state that a limited partnership lacks continuity of life notwithstanding the fact that a dissolution may be avoided by the remaining general partners agreeing to continue the partnership or by at least a majority in interest of the remaining general and limited partners combined agreeing to continue the partnership upon an event of withdrawal of a general partner, and to clarify that the regulations apply, not only to the retirement, death, or insanity of a general partner, but also to all other events of withdrawal of a general partner.

In addition, the citation to *Glensder Textile Co.* v. *Commissioner*, 46 B.T.A. 176 (1942), *acq.*, 1942–1 C.B. 8, at the end of paragraph (b)(1) of § 301.7701–2 of the regulations is amended to conform the current citation rules.

Special Analyses

It has been determined that these proposed rules are not major rules as defined in Executive Order 12291. It also has been determined that section 553(b) of the Administrative Procedures Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these proposed regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably a signed original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying in their entirety. A public hearing will be held on October 20, 1992. See Notice of hearing published elsewhere in this issue of the **Federal Register**.

Drafting Information

The principal author of these regulations is James A. Quinn of the Office of Assistant Chief Counsel (Passthroughs and Special Industries), Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

List of Subjects in 26 CFR Part 301

Administrative practice and procedure, Alimony, Bankruptcy, Child support, Continental shelf, Courts, Crime, Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Investigations, Law enforcement, Oil pollution, Penalties, Pensions, Reporting and recordkeeping requirements, Statistics, Taxes.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 301 is proposed to be amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 continues to read as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 301.7701–2 is amended as follows:

1. The third sentence of paragraph (b)(1) is revised.

2. The citation at the end of paragraph (b)(1) is revised.

3. The revised provisions read as follows:

§ 301.7701–2 Associations.

* * * * *

(b) * * *

(1) * * * If the death, insanity, bankruptcy, retirement, resignation, expulsion, or other event of withdrawal of a general partner of a limited partnership causes a dissolution of the partnership, continuity of life does not exist; furthermore, continuity of life does not exist notwithstanding the fact that a dissolution of the limited partnership may be avoided, upon such an event of withdrawal of a general partner, by the remaining general partners agreeing to continue the partnership or by at least a majority in interest of the remaining partners agreeing to continue the partnership. *See Glensder Textile Co.* v. *Commissioner*, 46 B.T.A. 176 (1942), *acq.*, 1942–1 C.B. 8.

* * * * *

Joe Kump,

Acting Commissioner of Internal Revenue.

[FR Doc. 92–17086 Filed 7–21–92; 8:45 am]

BILLING CODE 4830–01–M

26 CFR Part 301

[PS–7–92]

RIN 1545–AQ46

Continuity of Life–Limited Partnerships; Hearing

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed regulations under section 7701 of the Internal Revenue Code relating to the classification of organizations for tax purposes. The proposed regulations clarify the rule in the regulations regarding the characteristic of continuity of life of a limited partnership.

DATES: The public hearing will be held on Tuesday, October 20, 1992, beginning at 10 a.m. Requests to speak and outlines of oral comments must be received by Tuesday, September 29, 1992.

ADDRESSES: The public hearing will be held in the IRS Commissioner's Conference Room, room 3313, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Requests to speak and outlines of oral comments should be submitted to the Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R [PS–7–92], room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Bob Boyer of the Regulations Unit, Assistant Chief Counsel (Corporate), 202–377–9231, (not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations that amend 26 CFR part 301. The proposed regulations clarify the rule in 26 CFR 301.7701–2(b)(1) regarding the characteristic of continuity of life of a limited partnership. These regulations appear in the proposed rules sections of this issue of the **Federal Register**.

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit not later than Tuesday, September 29, 1992, an outline of the oral comments/testimony to be presented at the hearing and the time they wish to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation exclusive of the time consumed by the questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the persons testifying. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue:

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 92-17188 Filed 7-21-92; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

33 CFR Part 334

Restricted Areas for Gulf Coast Homeports at Ingleside, Texas, Mobile, Alabama, and Pascagoula, Mississippi

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Corps of Engineers proposes to establish naval restricted areas in the waters of the Gulf of Mexico at the Naval Homeports located at Ingleside, Texas; Mobile, Alabama, and Pascagoula, Mississippi. The purpose of the restricted areas is to reduce safety hazards and security risks and protect persons and property from the dangers encountered in these areas.

DATES: Written comments must be received on or before August 21, 1992.

ADDRESSES: Send written comments in response to this proposal to: HQUSACE, Attn: CECW-OR, Washington, DC 20314-1000.

FOR FURTHER INFORMATION CONTACT: For information please contact Mr. Ralph Eppard at (202) 272-1783.

SUPPLEMENTARY INFORMATION: Pursuant to its authorities in section 7 of the Rivers and Harbors Act of 1917 (40 Stat. 266; 33 U.S.C. 1) and chapter XIX of the Army Appropriations Act of 1919 (40 Stat. 892; 33 U.S.C. 3), the Corps of Engineers proposes to establish restricted areas at each of the Navy Gulf Coast Homeports located at Ingleside, Texas, Mobile, Alabama, and Pascagoula, Mississippi. The proposed restricted areas would encompass the waters surrounding the Naval Stations and piers where extensive Naval operations take place. The proposed restricted areas would be used extensively by U.S. Naval ships and commercial vessels under contract to the Navy, in daily operations around the pier. The piers will be used to provide fuel, maintenance and other services for these vessels which could be hazardous to other vessels. Naval operations in the area include the following:

(a) Docking, undocking, loading, unloading, maintenance and transiting the area;

(b) Support/maintenance from the pier and by floating crane, tugs and other yard craft;

(c) Helicopter traffic; and

(d) Visiting ships, both U.S. and foreign.

The restricted areas are essential to protect persons and property from the dangers associated with these operations and safeguard the area from accidents, sabotage and other subversive acts.

Economic Assessment and Certification

This proposed rule is being issued with respect to a military function of the Department of Defense and the provisions of Executive Order 12291 do not apply.

I hereby certify that this proposed rule will have no significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 334

Navigation (water), Transportation.

In consideration of the above, the Corps of Engineers proposes to amend part 334 of title 33 as follows:

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

1. The authority citation for part 334 continues to read as follows:

Authority: 40 Stat. 266; (33 U.S.C. 1) and 40 Stat. 892; (33 U.S.C. 3).

2. Part 334 is amended by adding § 334.782, to read as follows:

§ 334.782 Naval Station Mobile, Mobile, Alabama; naval restricted area.

(a) *The area.* The waters of Mobile Bay beginning at a point at latitude 30°31'25.9"N, longitude 88°05'25.8"W, thence easterly to latitude 30°31'26"N, longitude 88°04'59.2"W, thence northerly to latitude 30°31'40.5"N, longitude 88°04'59.3"W, thence south-southwesterly along the shoreline to the point of beginning.

(b) *The regulations.* Mooring, anchoring, fishing or recreational boating shall not be allowed within the restricted area. Commercial vessels at anchor will be permitted to swing into the restricted area while at anchor and during tide changes.

(c) *Enforcement.* The regulations in this section shall be enforced by the Commanding Officer, Naval Station Mobile and such agencies as he/she shall designate.

3. Part 334 is amended by adding § 334.786, to read as follows:

§ 334.786 Naval Station Pascagoula, Pascagoula, Mississippi; naval restricted area.

(a) *The area.* The waters of Pascagoula Harbor beginning at a point at latitude 30°20'18"N, longitude 88°34'50.3"W, thence northerly to latitude 30°20'34.3"N, longitude 88°34'51.8"W, thence easterly to latitude 30°20'34.3"N, longitude 88°34'9.6"W, thence southerly to latitude 30°20'19.5"N, longitude 88°34'9.6"W, thence westerly along the shoreline to the point of beginning.

(b) *The regulations.* Mooring, anchoring, fishing or recreational boating shall not be allowed within the restricted area when required by the Commanding Officer of Naval Station Pascagoula to safeguard the installation and its personnel and property in times of an imminent security threat; during special operations; during natural disasters; or as directed by higher authority. Commercial vessels at anchor will be permitted to swing into the restricted area while at anchor and during tide changes.

(c) *Enforcement.* The regulations in this section shall be enforced by the Commanding Officer, Naval Station Pascagoula and such agencies as he/she shall designate.

4. Part 334 is amended by adding § 334.802, to read as follows:

§ 334.802 Ingleside Naval Station, Ingleside, Texas; naval restricted area.

(a) *The area.* The waters of Corpus Christi Bay beginning at a point at latitude 27°49'13.6"N, longitude 97°12'5.7"W, thence southerly to latitude 27°49'7.3"N, longitude 97°12'5.4"W, thence south-southwesterly to latitude 27°49'01"N, longitude 97°12'39.4"W, thence north-northeasterly to latitude 27°49'02.4"N, longitude 97°12'48.3"W, thence north-northeasterly to latitude 27°49'14.9"N, longitude 97°12'42.7"W, thence easterly along the shoreline to the point of beginning.

(b) *The regulations.* Mooring, anchoring, fishing or recreational

boating shall not be allowed within the restricted area. Commercial vessels at anchor will be permitted to swing into the restricted area while at anchor and during tide changes.

(c) *Enforcement.* The regulations in this section shall be enforced by the Commanding Officer, Naval Station Ingleside and such agencies as he/she shall designate.

Dated: July 9, 1992.

Approved:

Herbert H. Kennon,

Deputy Director of Civil Works.

[FR Doc. 92-17225 Filed 7-21-92; 8:45 am]

BILLING CODE 3710-08-M

POSTAL SERVICE

39 CFR Part 111

Pallet Discount for Second-Class Mailpieces

AGENCY: Postal Service.

ACTION: Notification of public meeting.

SUMMARY: The Postal Service is holding a public meeting to discuss changes to the Domestic Mail Manual (DMM) regulations concerning preparation of second-class mail on pallets that may be warranted if discounts for such preparation are approved.

DATES: The meeting will be held on Tuesday, July 28, from 10 a.m. to 2 p.m.

ADDRESSES: The address of the meeting is U.S. Postal Service Headquarters, 475 L'Enfant Plaza, SW., Washington, DC, in the Ben Franklin Room.

FOR FURTHER INFORMATION CONTACT: Mr. Whittaker J. Jones, Office of Product Management, 475 L'Enfant Plaza, SW., Washington, DC 20260-5913, telephone (202) 268-2254.

SUPPLEMENTARY INFORMATION: On September 25, 1991, pursuant to 39 U.S.C. 3622 and 3623, the Postal Service filed a request for a recommended decision by the Postal Rate Commission (PRC) on the establishment of discounts for second-class mailpieces prepared on pallets. The PRC subsequently designated this filing as Docket No. MC 91-3, (hereafter referred to simply as MC 91-3). The Postal Service is issuing this notice to advise the public that a meeting has been scheduled to discuss issues relating to the implementation of these discounts assuming the PRC's recommended decision in MC 91-3 is consistent with the Postal Service's request and the Governors of the Postal Service, acting pursuant to 39 U.S.C. 3625, approve that recommended decision.

Attendance at this meeting is open to the interested public but limited to the space available. Persons planning to attend should contact Whittaker Jones, at the number provided above, to register. The discussion will be limited to issues and concerns pertaining to second-class pallet preparation only. Items to be discussed may include, but are not limited to:

1. Levels of presort.
2. Minimum pallet weights.
3. Maximum pallet heights for double stacked pallets.
4. Physical pallet preparation.
5. Projected mail volumes on pallets based on different preparation options.

Following the meeting, if the Postal Service determines that significant changes to existing second-class pallet regulations are warranted, the Postal Service will develop a proposed rule for publication in the **Federal Register** and public comment.

Stanley F. Mires,

Assistant General Counsel, Legislative Division.

[FR Doc. 92-17303 Filed 7-21-92; 8:45 am]

BILLING CODE 7710-12-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 122

[FRL-4155-6]

National Pollutant Discharge System General Permit and Reporting Requirements for Discharges From Concentrated Animal Feeding Operations

AGENCY: Environmental Protection Agency.

ACTION: Notice of draft general NPDES permits for discharges from confined animal feeding operations.

SUMMARY: Pursuant to sections 301, 304 (b) and (c), and 306 (b) and (c) of the Clean Water Act. EPA regulations define concentrated animal feeding operations as point sources subject to the NPDES permit program, list the criteria for determining a Concentrated Animal Feeding Operation (CAFO's), and establish the effluent limitation guidelines for Feedlots pursuant to section 306 (b) and (c) of the Clean Water Act.

The **Federal Register** published November 16, 1990 contains application requirements for all storm water discharges associated with industrial activities, which includes facilities with National Effluent Guidelines for storm water. The effluent limitations apply to all wastewaters from feedlot operation areas, including those generated by precipitation. This places feedlots in the category of National Effluent Guidelines for storm water. All dischargers covered by the November 1990 publication must apply for a permit or gain coverage under a promulgated permit for storm water.

This notice requests comments on the separate general permits for concentrated animal feeding operations in four States (Louisiana, New Mexico, Oklahoma, and Texas) without authorized NPDES State programs and on Indian lands in New Mexico and Oklahoma. Separate general permits are being noticed for each State.

DATES: Comments on the proposed permits must be received on or before the date 10 days following the date of last public hearing in that State. The comment period for the permit in State of Texas ends September 11, 1992. The comment period for the permit in the State of Louisiana ends September 4, 1992. The comment period for the permit in the State of Oklahoma ends September 8, 1992. The comment period for the permit in the State of New Mexico ends September 8, 1992. See **SUPPLEMENTARY INFORMATION** for information on hearing dates.

ADDRESSES: The public should send an original and two copies of their comments addressing any aspect of this notice to Ellen Caldwell, Permits Branch of Water Division (6W-PS), U.S. Environmental Protection Agency Region 6, 1445 Ross Ave. Suite 1200, Dallas, Texas 75202 (214) 655-7190.

Comments addressing factors or issues which are specific to one or several general permits (e.g., specific requirements for the general permit authorizing concentrated animal feeding operations in Texas), should clearly indicate the applicability of the comment to a particular State. The public record is located at EPA Region 6, and is available upon written request. Requests for copies of the public record should be addressed to Ellen Caldwell at the address above. A reasonable fee may be charged for copying.

See **SUPPLEMENTARY INFORMATION** for information on hearing addresses.

FOR FURTHER INFORMATION CONTACT: For further information on the proposed draft general permits contact Ellen Caldwell, Permits Branch of Water Division (6W-PS), U.S. Environmental Protection Agency Region 6, 1445 Ross Ave., suite 1200, Dallas, Texas 75202 (214) 655-7190.

SUPPLEMENTARY INFORMATION:

Hearings

Meetings and Public Hearings will be held in each of the states to provide information on the permit conditions and allow for public comment on the permit. Informal meetings with question and answer sessions are scheduled prior to each of the Public Hearings where the public can make formal statements and comments for the public record. The meetings and public hearings to allow for comments on general permits for the State in which the hearing is held are scheduled as follows:

(1) September 1, 1992, Tuesday, question and answer session from 3 p.m., to 5 p.m., and hearing from 7 p.m. to 10 p.m., in the Civic Center, 401 S. Buchanan (3rd and Buchanan), Amarillo, Texas 79186.

(2)August 21, 1992, Friday, question and answer session from 3 p.m. to 5 p.m. and hearing from 7 p.m. to 10 p.m., Regency Ballroom, Hyatt Regency San Antonio on the Riverwalk, 123 Losoya Street, San Antonio, Texas 78205.

(3) August 24, 1992, Monday, question and answer session from 3 p.m. to 5 p.m. and hearing from 7 p.m. to 10 p.m., Tucker Building, 8919 World Ministry Avenue. Baton Rouge, Louisiana 70810.

(4) August 27, 1992, Thursday, question and answer session from 3 p.m. to 5 p.m. and hearing from 7 p.m. to 10 p.m., Central Plaza Hotel & Convention Center, 112 S.Martin Luther King, Junction of I–35 & I–40 (Eastern Exit 127), Oklahoma City, Oklahoma 73117.

(5) August 28, 1992, Thursday, question and answer session from 3 p.m. to 5 p.m. and hearing from 7 p.m. to 10 p.m., Hyatt Regency, 330 Tijeras NW, Albuquerque, NM 87102.

Contents of this Preamble

I. Background

The 1972 amendments to the Federal Water pollution Control Act (FWPCA, also referred to as the Clean Water Act or CWA),[1] prohibited the discharge of any pollutant to navigable waters from a point source unless the discharge is authorized by a NPDES permit. Efforts to improve water quality under the NPDES program have traditionally focused on reducing pollutants in discharges of industrial process waste water and from municipal sewage treatment plants. Sewage outfalls and industrial discharges were easily identified as being responsible for poor, often drastically degraded water quality conditions. Section 306(b)(1)(A) of the SWA required EPA to establish standards of performance for the 27 industrial categories listed in this section of the CWA. Feedlots are included in the 27 categories of industries listed.

The Code of Federal Regulations was amended February 14, 1974 to include effluent guidelines for Feedlots (39 FR 5706); and to include application requirements for concentrated animal feeding operations (40 CFR 122.23) In addition, the regulations requiring applications from dischargers of Storm Water Associated With Industrial Activity includes all industrial activities which have National Effluent Guidelines for storm water. The effluent guidelines published in 1974 include requirements for any waste water or precipitation (storm water) which comes in contact with products from the concentrated feeding areas in feedlots. The technology standard established in the effluent guidelines for feedlots is No Discharge unless a result of the 25-year, 24-hour storm event.

II. Framework of NPDES System

Congress established the NPDES program with the 1972 Amendments to the FWPCA. Section 402 of the Act requires EPA to administer a national permit program to regulate point source discharges of pollutants to waters of the United States and sets out the basic elements of the program.

A. State Programs

The Act allows States to request EPA authorization to administer the NPDES program instead of EPA. Under section 402(b), EPA must approve a State's request to operate the permit program once it determines that the State has adequate legal authorities, procedures, and the ability to administer the program. At this point in time, one State in Region 6 is authorized to, at a minimum, issue NPDES permits for municipal and industrial sources and is currently authorized by EPA to issue NPDES general permits. EPA Region 6 issues all NPDES permits in the four States (LA, TX, OK, and NM) without NPDES authorized programs.

B. Requirements in NPDES Permits

The CWA establishes two types of standards for conditions in NPDES permits, technology-based standards and water quality-based standards. These standards are used to develop effluent limitations, special conditions, and monitoring requirements in NPDES permits. Section 402(a)(1) authorizes the inclusion of other types of conditions that are determined to be necessary, known as special conditions, in NPDES permits. Special conditions include requirements for best management practices (BMPs).

1. Technology-Based Standards

Technology-based requirements under section 301(b) of the Act represent the minimum level of control that must be imposed in a permit issued under section 402 of the Act. Two technology-based requirements are appropriate for existing feedlots: (1) Best practicable control technology economically achievable (BCT); and (2) best available technology economically achievable (BAT). The BCT standard applies to the control of conventional pollutants, while the BAT standard applies to the control of all toxic pollutants and for all pollutants which are neither toxic nor conventional pollutants. Section 306 of the CWA provides for EPA to establish new source performance standards for new sources.

Technology-based requirements may be established through one of two methods: (1) Application of national BAT/BCT effluent limitations guidelines promulgated by EPA under section 304 of the CWA and new source performance standards promulgated under section 306 of the CWA applicable to dischargers by category or subcategory; and (2) on a case-by-case basis under section 402(a)(1) of the Act, using the best professional judgement (BPJ), for pollutants or classes of discharges for which EPA has not promulgated national effluent limitations guidelines.

Note: EPA only establishes new source performance standards under section 306 of

[1] Federal Water Pollution Control Act, as amended: 33 U.S.C. 1251, 1311, 1314 (b) and (c), 1316 (b) and (c), and 1317 (c); 86 Stat. 816 et seq., Public Law 92–500; 91 Stat. 15567, Public Law 95–217.

the CWA when developing national effluent limitations guidelines, and not when establishing permit conditions on a case-by-case basis.

2. Water Quality-Based Standards for Controls

In addition to technology-based controls, section 301(b) of CWA also requires that NPDES permits must include any conditions more stringent than technology-based controls necessary to meet State water quality standards. Water quality-based requirements are established under this provision on a case-by-case basis.

III. Permitting

A. Prior Permitting

Between 1974 and 1982, EPA promulgated effluent limitations guidelines for wastewater and storm water discharges from ten categories of industrial discharges:

- Cement Manufacturing.
- Feedlots.
- Fertilizer Manufacturing.
- Petroleum Refining.
- Phosphate Manufacturing.
- Steam Electric.
- Coal Mining.
- Ore Mining and Dressing.
- Mineral Mining and Processing.
- Asphalt Emulsion.

Site specific permitting efforts were focused on facilities with the greatest potential to impair or impact water quality.

B. Permit Application Regulations

1. Regulations Requiring NPDES Coverage

In accordance with the 1972 FWPCA and 40 CFR Part 122 all dischargers to waters of the United States are required to apply for a NPDES permit. 40 CFR part 122.23 establishes concentrated animal feeding operations (CAFOs) as point source dischargers subject to NPDES permitting.

On November 16, 1990, (55 FR 47990), EPA published NPDES permit application requirements for facilities with storm water discharges associated with industrial activity. Among these designated facilities are those which have national effluent guidelines for storm water. Under these regulations all feedlots must apply for an NPDES permit. Feedlot facilities must at a minimum obtain coverage under a promulgated general permit for storm water.

2. Scope of NPDES Concentrated Animal Feeding Operation (CAFO) Permitting Program

All animal feeding operations listed in 40 CFR part 122 appendix B are considered to be concentrated animal feeding operations (CAFOs) and which must be permitted under the NPDES permitting program:

New and existing operations which stable or confine and feed or maintain for a total of 45 days or more in any 12-month period more than the numbers of animals specified in any of the following categories:

a. 1,000 slaughter or feeder cattle;
b. 700 mature dairy cattle (whether milkers or dry cows);
c. 2,500 swine weighing over 55 pounds;
d. 500 horses;
e. 10,000 sheep or lambs;
f. 55,000 turkeys;
g. 100,000 laying hens or broilers when the facility has unlimited continuous flow watering;
h. 30,000 laying hens or broilers when facility has liquid manure handling system;
i. 5,000 ducks; or
j. 1,000 animal units from a combination of slaughter steers and heifers, mature dairy cattle, swine over 55 pounds and sheep;

New and existing operations which either discharge pollutants into navigable waters through a man-made ditch, flushing system, or other similar man-made device, or directly into waters of the United States, and which stable or confine and feed or maintain for a total of 45 days or more in any 12-month period more than the numbers or types of animals in the following categories:

a. 300 slaughter or feeder cattle;
b. 200 mature dairy cattle (whether milkers or dry cows);
c. 750 swine weighing over 55 pounds;
d. 150 horses;
e. 3000 sheep or lambs;
f. 16,000 turkeys;
g. 30,000 laying hens or broilers when the facility has unlimited continuous flow watering systems;
h. 9000 laying hens or broilers when facility has liquid manure handling system;
i. 1,500 ducks; or
j. 300 animal units (from a combination of slaughter steers and heifers, mature dairy cattle, swine over 55 pounds and sheep).

However, no animal feeding operation is considered by EPA to be a concentrated feeding operation or a point source if such animal feeding operation discharges only in the event of a 25 year, 24-hour storm event.

This regulatory definition is meant to encompass all animal operations which have industrial characteristics. The definition "concentrated animal feeding operation" includes the number of animals confined; the length of time the animals are confined at the facility; and the type of the confinement. If the facility confines 1000 animal units or more, or 300 animal units and the facility has any manner of conveyance for waste or storm water runoff which allows the water to be discharged to a water of the U.S., then the facility is subject to NPDES permitting requirements. Operations smaller than the regulatory number are usually agricultural in nature and are not subject the NPDES permit program unless the Director has designated them as a "concentrated" animal feeding operation affecting water quality.

Also, it is not the intent of EPA to regulate facilities through NPDES permitting if animals are on the facility for less than 45 days out of a 12 month period. Some persons have expressed the opinion that this relieves animal transfer facilities of permitting requirements because the animals are transferred after only a few days. Region 6 believes strongly that it is clearly the intent of the regulation to include transfer facilities, as they house animals almost continuously. It is irrelevant whether they are the same animals for the 45 day duration.

Although the definition was not meant to include obviously non-point source operations where the animals are confined in pasture situations, the discharge from areas of concentrated animal feeding or housing must be permitted if the facility meets the regulatory definition. Region 6 wants to clarify that even though some of the facility areas may have livestock and pasture crops co-existing during the normal growing season (e.g. at a dairy facility), this does not exempt the areas of concentrated animal activity (pens, barns and houses, etc.) from consideration as a point source with NPDES permit responsibilities.

In addition to the concentrated animal feeding operations (CAFOs) which have permitting requirements as "point sources", this permit encourages any animal feeding operation which determines it discharges pollutants to a water of the U.S. to establish voluntary compliance with the terms of this permit.

The NPDES permit programs only addresses point source discharges. Section 503(14) of the CWA defines the term "point source" broadly to include "any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, * * * from which pollutants are or may be discharged. In most court cases, the term

"point source" has been interpreted broadly. For example, the holding in *Sierra Club* v. *Abston Construction Co., Inc.*, 620 F.2d 41 (5th Cir., 1980) indicates that changing the surface of land or establishing grading patterns on land will result in a point source where the runoff from the site ultimately is discharged to waters of the United States. The Agency will embrace the broadest possible definition of point source consistent with the legislative intent of the CWA and court interpretations to include any identifiable conveyance from which pollutants might enter the waters of the United States.

3. CAFOs With Expired Permits or Pending Applications

All facilities which have expired permits and have reapplied in accordance with 40 CFR 122.21(d); and all facilities which have submitted applications in accordance with 40 CFR 122.21(a) are automatically covered by the terms of this permit. A permittee can request to be excluded from coverage by this permit by applying for an individual permit in accordance with 40 CFR 122.28(b)(3)(iii). If the reasons cited are adequate to support the issuance of an individual permit, the Director shall grant the request by the issuance of an individual permit. Submission of an application does not authorize the permittee to discharge.

Some regulated concentrated animal feeding operations which are smaller than the levels specified in 40 CFR 412.10 may wish to consider requesting an individual permit (as discussed in part V of this fact sheet). However, Region 6 believes that biological or other treatment for these facilities will be excessively expensive. We expect, therefore, few of these smaller facilities to utilize this option. In any case, this reason for requesting an individual permit will to apply for any feedlot with effluent guidelines establishing a no discharge to waters to the U.S. requirement.

4. Feedlot Discharge Through Other Sewer Systems

The November 16, 1990 notice clarifies that industrial discharges to waters of the United States, including those through storm sewers to waters of the United States, must obtain NPDES permit coverage. However, discharges associated with industrial activity to sanitary sewer systems (i.e. those systems which are part of a Wastewater Treatment Plant collection system), including combined sewer systems, generally do not need to obtain NPDES permit coverage, although they may be subject to pretreatment requirements.

5. Permit Application Requirements

Feedlots are subject to the application deadlines required of storm water dischargers with storm water associated with industrial activity as defined in the November 16, 1990 **Federal Register**. 40 CFR 122.21 excludes persons covered by general permits from requirements to submit individual permit applications. Coverage under this general will eliminate the operators need to apply for an individual permit.

a. Application of general permit. General permits are an important tool for assuring adequate environmental safeguards for large numbers of similar facilities without the administrative and resource burdens involved in individual permit issuance. EPA wants to emphasize that, except for the procedural differences set out at § 122.28 in the NPDES regulations, general permits are analogous to individual permits in every respect. General permits are still subject to the same reporting and monitoring requirements, limitations, enforcement provisions, penalties, and other substantive requirements as individual permits. General permits should be viewed as an administrative tool enabling the issuance of one permit to authorize a group of dischargers. The general permit program has been available to authorize NPDES States since its inception in 1979. Most general permits utilize a Notice of Intent (NOI) as a mechanism to register covered facilities. The administrative burdens on the permit issuing agency and the costs to dischargers can be reduced by replacing more complicated permit application requirements with simplified requirements. The public notice for a general specifies whether a Notice of Intent (NOI) is required prior to coverage.

There are two situations where an NOI would not have to be submitted to authorize discharges under a general permit are authorized by 40 CFR 122.28(b)(2)(v). The first situation is where the Director notifies the discharger that the discharge is covered by the permit. The second situation is where the Director decides that an NOI is inappropriate for a general permit. To make the latter decision, the Director considers the type of discharges, the expected nature of the discharges, the potential for toxic and conventional pollutants in the discharges, the expected volume of the discharges, other means of identifying discharges covered by the permit, and the estimated number of discharges to be covered by the permit. Where this approach is pursued, the Director is required to describe the reasons for not requiring an NOI in the fact sheet of the general permit.

This public notice specifies that a Notice of Intent (NOI) is not required for coverage under this general permit. A Notice of Intent (NOI) in general permits is a mechanism which can be used to establish an accounting of the number of permittees covered by the general permit, the nature of operations at the facility generating the discharge, and their identity and location. This type of information is appropriate when there is a discharge being monitored and tracked, however, in situations where there is to be no discharge, via requirements to contain all wastewater and storm water, it is unnecessary for the Agency to track these non-dischargers. Region 6 estimates that there are over 1000 concentrated animal feeding operations (CAFOs) in the regulated four state area. Tracking activities and inspections would be a severe drain on the Region's resources, and would increase the work load on the existing program. Region 6 believes that violations of the permit will be self reported by the permittee or the concerned public. In addition, the States in Region 6 have an compliance tracking and inspection system which is already established, and will provide the Director with information concerning any water quality violations.

Where a violation is not reported by the operator of the facility, the concerned public will bring such violations to the attention of the Director. Upon the resulting inspection of the site and a review of the pollution prevention plan and other required documentation, EPA will be able to determine if the permittee has violated the permit conditions by reviewing the required documentation to be kept on site. This will allow the Agency to focus its inspection and enforcement efforts toward the water quality problems and violators, and will afford Region 6 the same enforcement potential to insure compliance with the permit as it would enjoy with a Notice Of Intent. Due to the opportunity for public scrutiny, all permittees will develop adequate documentation of compliance with this permit. For these reasons it will not be necessary to register the permittees under the general permit via a notice of intent. Therefore, in accordance with 40 CFR 122.28(b)(2)(v) a notice of intent shall not be filed by the operator to gain coverage under this permit. This permit will apply to all CAFOs covered by permitting requirements under 40 CFR 122.23.

b. Individual permit application requirements. Facilities which the Director determines are causing or contributing to a violation of water quality standards may be required to file an individual permit application. The requirements for an individual permit application are reflected in Form 1 and Form 2B. These forms require the development and submission of detailed site-specific information. The information is intended to be used to develop the site-specific conditions generally associated with individuals permits. Individual permit applications may be needed under several circumstances. Examples include: General permits where the owner or operator of a discharge authorized by a general permit is requesting to be excluded from the coverage of the general permit by applying for a permit (see 40 CFR 122.28(b)(2)(iii) for EPA-issued general permits); or the Director requiring an owner or operator of a discharge authorized by a general permit to apply for an individual permit (see 40 CFR 122.28(b)(2)(ii) for EPA-issued general permits).

Advantages of a General Permit:

- General requirements and recommended management practices will be established for discharges covered by the permit;
- Facilities whose discharges are covered by the permit will have an opportunity to comply with the CWA, and will therefore, be afforded some protection from third-party litigation;
- The public will have the opportunity through the Agency to review reports and to comment on permitting activities for concentrated animal feeding operations;
- Many Facilities without an existing permit will automatically have requirements to comply with Technology and Management requirements.

C. Burdens on Permitting Agencies

The focal issue in developing a general permit for CAFOs under the NPDES permitting program is to provide an expedient and economic permitting option for both the regulated community and the permitting Agency. Implementing the NPDES permitting program is a complex process. The steps in developing individual permits are very resource intensive. The issuance of a general permit to reduce the administrative burden benefits the Agency, the tax payer, and the environment. Major steps to issue a permit include:

- *Training of Permit Writers.* Permit writers must acquire the appropriate expertise necessary for writing permits.
- *Permit Application Review.* Permit applications (or notices of intent to be covered under a general permit) that are received initially must be screened and reviewed for completeness. When this review indicates that necessary information has not been provided, the applicant must be notified and an explanation of the deficiency provided. Applications that are complete must be assigned to a permit writer and filed.
- *Preparing a Draft Permit.* Preparing a draft permit and fact sheet involves a technical evaluation of the discharge based on a review of the permit application or other appropriate information. The appropriate factors associated with technology-based or water quality-based standards must be evaluated. Appropriate effluent limitations, monitoring requirements, and any special conditions need to be developed.
- *Public Notice of the Draft Permit.* Draft permits must undergo appropriate public notice. In some cases public hearings must be held.
- *Permit Issuance.* Public comments must be received, evaluated, and responded to in developing a final permit. Any request for an evidentiary hearing must be addressed.
- *Compliance Monitoring/ Enforcement.* A number of compliance monitoring activities can be conducted including reviewing discharge monitoring reports, conducting site inspections, and evaluating other information. Enforcement actions include assessing penalties and issuing administrative orders. In some cases, enforcement actions lead to litigation.

In addition to these steps, a number of administrative functions, such as responding to public inquiries, can create burdens for permit issuing agencies. The number of such inquiries can be particularly high when a general permit covering a large regulated community is involved.

As discussed earlier in this notice, efforts to permit point source discharges under the CWA have focussed primarily on industrial process discharges and discharges from POTWs. EPA and authorized NPDES States have issued more than 48,600 NPDES permits for industrial process discharges, 15,600 NPDES permits for POTWs, and approximately 59 general permits have been issued covering at least 7,200 facilities. The Agency estimates that there are over 1000 concentrated animal feeding operation facilities in Region 6. Most feedlot facilities have not been addressed under the NPDES program in the past. Today's notice incorporates several elements of EPA's initial attempts to establish a workable NPDES program that reflects the realities of these administrative burdens.

D. Storm Water Permitting Strategy

Feedlot facilities are subject to the established storm water permitting program. The Agency plans to address permitting for those facilities listed in the November 1990 FR with the following priority based strategy:

- *Tier I—Baseline Permitting:* One or more general permits will be developed to initially cover the majority of storm water discharges associated with industrial activity;
- *Tier II—Watershed Permitting:* Facilities within watersheds shown to be adversely impacted by storm water discharges associated with industrial activity will be targeted for individual or watershed-specific general permits.
- *Tier III—Industry-Specific Permitting:* Specific industry categories will be targeted for individual or industry-specific general permits; and
- *Tier IV—Facility-Specific Permitting:* A variety of factors will be used to target specific facilities for individual permits.

1. Tier I

Although facilities with National Effluent Guidelines for storm water are included as one of the categories which must apply under the November 1990 FR, those facilities were excluded from coverage under the proposed Tier I Baseline General Permit for Storm Water Discharges Associated With Industrial Activity, and therefore, no permitting opportunity is provided for CAFOs.

2. Tier II

Where watersheds are shown to be impacted EPA will be issuing Tier II Watershed General Permits. These permits will apply to all discharges of storm water in the watershed; this will include the discharges from CAFOs.

3. Tier III

Specific industry categories will be targeted for individual or industry-specific general permits. These permits will allow permitting authorities to focus attention and resources on industry categories of particular concern, industries with effluent guidelines, and/or industry categories where tailored requirements are appropriate. The Agency will work with the States to develop model permits for selected classes of industrial storm water discharges. EPA is also working to identify priority industrial categories in the two Reports to Congress required under section 402(p)(5) of the CWA. This

permit is one of the first Tier III industry specific general permits developed by Region 6 under this strategy.

4. Tier IV

Individual permits will be issued where warranted by: the pollution potential of the discharge, the need for individual control mechanisms, water quality concerns, and where reduced administrative burdens exist. Where water quality concerns warrant the development of site specific individual permits for any CAFO facility, Region 6 will develop these permits on a priority basis.

E. Wastewater Treatment Strategies

1. End-of-Pipe Treatment

End-of-pipe treatment requirements are typically imposed through numeric effluent limitations, which provide the discharger with flexibility to design the most cost effective type of treatment for the given facility. For many types of industrial facilities, it may be a requirement to collect and treat the runoff from targeted areas of the facility. This approach was taken with 10 industrial categories with national effluent guideline limitations. There are several basic similarities among the national effluent guideline limitations:

- To meet the numeric effluent limitation, most, if not all, facilities must collect and temporarily store onsite runoff from targeted areas of the facility;
- The effluent guideline limitations do not apply to discharges whenever rainfall events, either chronic or catastrophic, cause an overflow of storage devices designed, constructed, and operated to contain a design storm. The 10-year, 24-hour storm, or the 25-year, 24-hour storm commonly are used as the design storm in the effluent guideline limitations; and

2. Best Management Practices

The term best management practices (BMPs) can describe a wide range of management procedures, schedules of activities, prohibitions on practices, and other management practices to prevent or reduce the pollution of surface waters of the United States. BMPs also include operating procedures, treatment requirements and practices to control feedlot runoff, drainage from raw materials, spills or leaks. BMPs can be established in two ways: BMP plans and site or pollutant-specific BMPs. EPA often establishes NPDES permit conditions that require generic BMPs to be identified and implemented through BMP plans. General permits often require BMP plans to insure compliance with the effluent limitations of the permit. Many of the BMPs in a typical BMP plan involve planning, reporting, training, preventive maintenance, and good housekeeping. Many facilities currently employ BMPs as part of normal operation. Experience has shown that many spills of hazardous chemicals can be attributed, in one way or another, to human error. Improper procedures, lack of training, and poor engineering are among the major causes of non compliance. Experience has shown that BMPs can be used appropriately and BMP plans can effectively reduce pollutant discharges in a cost-effective manner. BMP plans should reflect requirements for spill prevention. BMP plans should also ensure that solid and hazardous waste is managed in accordance with requirements established under the Resource Conservation and Recovery Act (RCRA) where appropriate. In these cases management practices required under RCRA should be expressly incorporated into the BMP plan.

Where specific pollutants have been identified as associated with a particular industrial activity, more advanced site or pollutant-specific BMP requirements can be developed. The following four categories describe these site or pollutant-specific BMPs:

- Prevention.
- Containment.
- Mitigation.
- Ultimate Disposition.

This general permit requires that each permittee covered by this permit develop a BMP plan to insure that the facility will remain in compliance with the effluent guidelines; and will provide the Agency with an opportunity to review documentation of the facility's "No Discharge" status. Pollutant specific BMPs will be developed for CAFOs if water quality violations identify specific pollutants which must be addressed for the protection of surface waters. These activities are most appropriately employed in individual site specific permits.

3. Traditional Management Practices

Many management practices have been employed by industry for many years and have gained acceptance as appropriate operation and maintenance. Because these practices enjoy widespread use they are considered to be "economically achievable". For example, lined retention or detention basins, water reuse, and land application practices can be used to contain waste and precipitation waters. However, care must be taken to evaluate the potential of many of these traditional devices for ground water contamination.

4. Elimination of Pollution Sources

In the case of CAFOs, the elimination of a pollution source may be the most effective way to control pollutants in discharges and to eliminate discharges. Options for reducing pollution sources include changing chemicals used at the facility, and modification of material management practices such as moving storage areas into buildings. Some options for reducing pollutants in discharges from feedlots include: *Building better containment structures; Implementing Best Management Practices to prevent pollution; Using traditional management practices; and Eliminating pollution sources.* Development of comprehensive control strategies should include controls from each of these categories.

IV. Draft General Permit for Concentrated Animal Feeding Operations

A. Today's Notice

Today's notice proposes a general permits for Concentrated Animal Feeding Operations (CAFOs) in four States (LA, TX, OK, NM). The following portion of this notice provides notice for draft NPDES general permits and accompanying fact sheets for CAFOs in LA, NM, OK, and TX. These draft general permits are intended to cover concentrated animal feeding operations with NPDES permitting requirements. The proposed permit contains: The Federal guidelines; the best management practices to insure that the permittee complies with the effluent requirement of "no discharge" to waters of the U.S.; and the technology standard set for storm water (i.e. the Pollution Prevention Plan). The final general permits will include all more stringent State Standards for CAFOs in that State.

Effective Date of Requirements

This permit shall be effective upon issuance.

EPA Contacts

LA, NM, OK, TX

United States EPA, Region VI, Water Management Division, (6W–PM), First Interstate Bank Tower at Fountain Place, 1445 Ross Avenue, 12th Floor, suite 1200, Dallas, TX 75202.

Proposed Schedule for General Permits Issuance

Draft Permits Transmitted to State requesting Section 401 certification: July 22, 1992.

Notice of Draft Permits in **Federal Register**: July 22, 1992.

Comment Period Closes

On the date 10 days after the last public hearing in that State. The comment period for the permit in the State of Texas ends August 28, 1992. The comment period for the permit in the State of Louisiana ends September 4, 1992. The comment period for the permit in the State of Oklahoma ends September 8, 1992. The comment period for the permit in the State of New Mexico ends September 8, 1992.

B. Fact Sheet for Draft General Permit

Publication of this draft general permit and fact sheet is designed to comply with the requirements of 40 CFR 124.10 (Public Notice of Permit Action and Public Hearing) simultaneously for all 4 draft general permits being noticed today. The language of the draft general permits is provided at the end of the preamble of this notice. In general, most conditions of the draft general permits are intended to apply to all of the general permits indicated above. Where conditions in different permits vary, these differences are indicated in the draft general permit.

1. Authority

In 1972, the Federal Water Pollution Control Act (also referred to as the Clean Water Act (CWA)) was amended to provide that the discharge of any pollutants to waters of the United States from any point source is unlawful, except if the discharge is in compliance with a National Pollutant Discharge Elimination System (NPDES) permit. 40 CFR 122.23 and 122 Appendix B establish concentrated animal feeding operations as a point source subject to NPDES permitting requirements.

2. Coverage Under the Proposed General Permit

Types of Discharges Covered. In 1976 (FR 11458), EPA promulgated the regulatory definition of Concentrated Animal Feeding Operations which addresses discharges of waste and precipitation waters from feedlots. (This definition is reprinted in the definition section of the draft general permit (part VII. 5.) found in today's notice). The permits that are being proposed are intended to cover all CAFOs with NPDES permitting requirements in the four States (TX, LA, OK, and NM), except duck facilities established prior to 1974. The effluent guidelines for these duck facilities are for biological treatment which is inconsistent with the "no discharge" requirements of the proposed permits. These discharges are best addressed with site specific, water quality permitting. The effluent limitations established for existing duck CAFOs limit total biological oxygen demand discharged per 1000 ducks to 1.66 kg as a daily maximum and 0.91 kg as a 30 day average. Pathogen requirements in the permit limit fecal coliform discharged to 400 colonies/100 ml of discharge. Facilities with new source performance standards (those facilities established after 1974) are required to meet the effluent limitation of "no discharge" to waters of the U.S. Duck facilities established after 1974 are covered by the proposed permits.

Designated Concentrated Animal Feeding Operations. Where the Director becomes aware of facilities which do not fit the definition of "concentrated" in 40 CFR part 122 Appendix B, but are considered by the Director to be contributing to a water quality problem, the Director may designate the animal feeding operation as a point source subject to the terms of this permit.

CAFOs With Expired Permits or Pending Application. Many existing CAFOs have submitted applications in accordance with NPDES requirements and have remained unpermitted due to the administrative work load and priorities. All of these applicants will gain coverage under the NPDES program through the issuance of this permit. Region 6 believes this benefits those applicants without an NPDES permit. Any permittee which desires an individual permit may petition the Director in accordance with Part I. D. 2. of the permit.

Additional Coverage Requirements for CAFOs Established After Permit Issuance. All CAFO established after the issuance of this permit will be subject to a full environmental review by this Agency to insure compliance with the National Environmental Policy Act. New CAFO facilities shall, prior to constructing, complete the form provided in Appendix D of this permit. The permittee will be required to have documentation of "No Significant Impact" or a completed Environmental Impact Statement, in accordance with an environmental review conducted by this Agency, for coverage under this permit. Completed documentation of the Agency's review and findings must be on site prior to any operations as a CAFO, and must remain on site as a condition of coverage under this permit.

3. Limitations on Coverage

The Director may deny coverage under this permit to any Animal Feeding Operations, that the Director determines is contributing to a water quality standard violation. The permittee will be notified that the Director has made such a determination, and will be required to submit an individual permit application on or before a date specified in the notification. The permittee may petition for more time if the permittee can show just cause for the delay.

Where discharges contain significant amounts of pollutants that can be removed by a sewage treatment plant, the discharge can be discharged to the sanitary sewage system. Such diversions must be coordinated with the operators of the sewage treatment plant and the collection system to avoid compounding problems with either combined sewer overflows (CSOs), basement flooding or wet weather operation of the treatment plant. It is unlikely that Wastewater Treatment Plants will be considerate of discharges from the CAFO facilities due to the volume of storm runoff which would accompany such a discharge. Where CSO discharges, flooding or plant operation problems can result, onsite storage followed by a controlled release during dry weather conditions may be considered. If the discharge is made to a Wastewater Treatment Plant which discharges in accordance with an NPDES permit, no permit is required, however, the discharge must be compliant with the pretreatment standards listed in 40 CFR part 412.

4. Permit Conditions

a. Description of draft permit conditions. The conditions of these draft permits have been developed to be consistent with the technology-based standards of the CWA (BAT/BCT) and the technology standard for storm water pollutant source controls. Based on a consideration of the appropriate factors for BAT and BCT requirements discussed in this fact sheet for controlling pollutants from feedlots, the draft general permit proposes effluent limitations, prohibitions, a set of tailored requirements for developing and implementing best management practices and pollution prevention plans.

The draft permit conditions reflect EPA's decision to select a number of best management practices and traditional management practices which prevent discharges. The draft permit conditions applicable to these facilities are not numeric effluent limitations, but rather are requirements for developing and implementing site specific controls to eliminate discharges except in the case of the 25 year, 24-hr. storm event.

EPA is authorized under 40 CFR 122.44(k)(2) to impose BMPs in lieu of numeric effluent limitations in NPDES permits when the Agency finds numeric effluent limitations to be inappropriate.

EPA may also impose BMPs which are "reasonably necessary * * * to carry out the purposes of the Act" under 40 CFR 122.44(k)(3). Both of these standards for imposing BMPs are recognized in *NRDC* versus *Costle*, 568 F.2d 1369, 1380 (D.C. Cir. 1977). The conditions in the draft general permits are proposed under the authority of both of these regulatory provisions. The BMP and pollution prevention requirements in these permits operate as limitations on effluent discharges that reflect the application of BAT/BCT. This is because the BMPs identified require the use of control technologies which, in the context of these general permits, are the best available of the technologies economically achievable (or the equivalent BCT finding). See, e.g. *NRDC* versus *EPA*, 822 f.2d 104, 122–23 (D.C. Cir. 1987) (EPA has substantial discretion to impose non-quantitative permit requirements pursuant to section 402(a)(1)).

b. Effluent limitations. Discharge limitations for all CAFOs except Duck Facilities Established prior to 1974.

The effluent limitations in this permit are established to be consistent with the BAT requirements for feedlots established in 40 CFR 412. The permittees will be required to contain all wastewaters and all precipitation runoff from the CAFO areas in the amount of the 25 year, 24-hour storm event. This source control of wastewater and contaminated storm water is considered to be both an industry standard and the most effective water quality control available to CAFO facilities. Region 6 requests comments on the effectiveness of this control measure, as well as, alternative industry standards used today to control the discharge of pollutants into waters of the United States. In addition the permit includes requirement for the permittee to document how the facility controls runoff in compliance with the permit.

c. Non-numeric limitations, best management practices, and other conditions——(1) *Prohibitions.* The permittee will be prohibited from discharging any wastes into the waste contaminant system which are not a product of proper operation and maintenance of the CAFO. This will effectively prohibit the facility from accepting outside wastes or from dumping other potentially hazardous materials into the retention system. This is necessary because any materials introduced into the containment structures have the potential to be discharged to a Water of the U.S. whenever a rainfall event exceeds the 25 year, 24-hour storm.

(2) *Proper Operation and Maintenance Requirements.* (A) Proper Operation and Maintenance Record. The permittee will be required to record the operation and maintenance of the facility. This information will provide the opportunity for the Agency or authorized agent to determine if the facility is in compliance with the permit conditions and the pollution prevention plan. This will also provide the permittee with information on the effectiveness of the BMP's established and the terms of the pollution plan.

Included in this record are: (a) Calculations required for application rates and retention facility capacity; (b) documentation of existing retention facility capacity; (c) date log indicating date that pens, lot, fence lines, feed lanes, and feed storage areas are cleaned; (d) date log indicating monthly inspection of retention facility for structural integrity and maintenance, including mowing and vegetation maintenance; (e) date log indicating weekly inspection of wastewater level in retention facility, including specific measurement of wastewater level; (f) if the waste (manure) is sold or given to other persons for beneficial use, maintain a log of: date of removal from the feedlot; name of hauler; and amount, in dry tons, of waste removed from the feedlot.

Region 6 believes that these records are required to determine if the facility has been compliant with the "no discharge" effluent limitation. The Agency must be able to determine when wastes have been removed and where they were disposed of, to determine that the wastes were not discharged into a water of the U.S. Region 6 requests comments on the appropriateness of the information required in the Operation and Maintenance Record, and suggestions of any additional records which the public believes are necessary to insure compliance with the requirements of the permit.

(B) Required Best Management Practices. the BMP's required in the permit include requirements for: (a) Retention structure design, capacity, operation and maintenance. These required BMPs insure that the design and maintenance of the retention facilities will be sufficient to prevent any discharge to a water of the U.S. that is not in compliance with the terms of this permit.

(b) Location requirements. Retention facilities and waste storage areas must not be located in areas of flooding, or where the storage of such wastes endangers public health.

(c) Waste removal. Wastes must be stored and removed in such a manner as to prevent discharge of the wastes to waters of the U.S.. Where waste disposal includes land application, the BMPs included require that the land application be at agronomic rates. Where wastes are applied in excess of plant uptake rates, the excess has the potential to enter surface waters through leaching and/or runoff.

(d) Pesticide use. The Region believes that there is reasonable potential for pesticides from CAFO facilities to be discharged to surface waters through runoff, and through discharges from the retention facility during storm events beyond the design retention. Proper use and storage of pesticides, and reuse of "dip vat" residues to spray pens will reduce the amounts of pesticide residues which runoff to the retention facility. Also the operator should evaluate the use of pesticides which are toxic to wildlife and aquatic life, and which do not break down readily into less toxic components.

(e) Dead animal removal. Dead animals must be disposed of in a way that prevents contaminated discharges to surface waters, and does not endanger public health.

The Agency requests comments from both the regulated community and the public on the BMP's required in the permit. Information is solicited regarding the potential effectiveness of the required BMP's as components of proper operation and maintenance of a concentrated animal feeding operation. It is important to the Agency in its efforts to protect the environment, and to determine the economic achievability of the required BMP's.

It is common for State Soil Conservation Service (SCS) to develop plans for operators of CAFOs, outlining requirements for retention structures and facility management practices, particularly with regards to the land application of the facility wastes. Where provisions in the SCS plans are equivalent to the BMPs outlined in this permit, the permittee may use the plan developed by the SCS for compliance with the permit. The Region believes that the SCS site specific evaluation will provide the facility with a plan that will be protective of the federal standards required. In developing the documentation required by this permit, the permittee may refer to the section of the SCS plan which satisfies that particular permit requirement. This simple reference will allow the permittee to avoid redundant documentation. The Agency requests comments from both the regulated

community and the public on the appropriateness of using SCS plans to comply, in part, with the BMP's required in the permit.

(C) Pollution Prevention Plan. The pollution prevention plan is considered to be the BAT standard requirement for the regulation of storm water. CAFOs with national effluent guidelines for storm water are subject to the requirements of the National program to regulate the pollutants discharged in storm water runoff. Facilities in compliance with the requirements of this permit will, in case of catastrophic, or chronic rain events, discharge to surface waters. The Pollution Prevention Plan will reduce these occasions, and reduce the pollutants these discharges will carry with them. All facilities covered by these general permits must prepare, retain and implement a pollution prevention plan. These tailored requirements have been developed to allow the implementation of site-specific measures that address features and activities, for the control of pollutants associated with feedlots. In 1979, EPA completed a technical survey of industry best management practices (BMPs) which was based on a review of practices used by industry to control the non-routine discharge of pollutants from non-continuous sources including runoff, drainage from raw material storage areas, spills, leaks, and sludge or waste disposal. This review includes analysis and assessment of published articles and reports, technical bulletins, and discussions with industry representatives through telephone contacts, written questionnaires and site visits.

The review identifies two classes of pollution control measures. The first class of controls includes those management practices which are generally considered to be essential to a good BMP program, low in cost, and applicable to broad categories of industry and types of substances. These practices are independent of the type of industry, ancillary sources, specific chemicals, group of chemicals, or plant-site locations. The survey concludes that these controls are broadly applicable to all industry types and activities, and should be viewed as minimum requirements in any effective BMP program. The second class of controls includes management practice controls which provide a second line of defense against the release of pollutants and includes prevention measures, containment measures, mitigation and cleanup measures, and treatment methods.[1] Since that time, EPA has, on a case-by-case basis, imposed BMP requirements in NPDES permits.

Major classes of water management controls for feedlots include: Land application of runoff onsite; water retention structures and artificial wetlands; and water detention structures. For many sites, a combination of these controls may be appropriate. The Agency is using the term "pollution prevention plan" in the context of these control plans because the term emphasizes that requirements in the plans provide a flexible basis for developing site-specific measures to minimize and control the amounts of pollutants that would otherwise enter the retention basin.

The plan requirements are based primarily on traditional management, pollution prevention and BMP concepts which have been tailored to feedlots. These permits establish the framework and the basic elements required for feedlot "Best Management Practices", in addition, the pollution prevention plan and suggested management practices provide flexibility to allow the development of site-specific measures. At a given site, specific measures incorporated into the pollution prevention plan will reflect the sources of pollutants that have been identified at the site. For example, a facility that has identified particular pesticides as potential sources of pollution will incorporate appropriate good housekeeping and management practices to address these sources. However, a facility not using pesticides would not have to incorporate measures to address these pesticides in their plan. The permittee has the flexibility to develop the plan themselves, to hire a professional, or to use components of a site specific SCS plan. At a minimum the following nine specific requirements should be addressed in the BMP plan to reduce pollutants in runoff from the facility:

- Pollutant Sources.
- Management Controls.
- Employee training.
- Visual Inspections.
- Preventive maintenance.
- Reporting and notification procedures.
- Housekeeping.
- Sedimentation and erosion.
- Spill response.

The Agency requests comments from both the regulated community and the public on the appropriateness of the components of the pollution prevention plan. Information regarding the potential effectiveness of the pollution prevention plan in preventing the discharge of pollutants from CAFOs is of great interest to the Agency.

Plan Requirements for Feedlot Facilities—(i) *Source Identification.* Pollution prevention plans must be based on an accurate understanding of the pollution potential of the site. The first part of the plan requires an evaluation of the sources of pollution at the side. The permit proposes that the source identification components of the plan identify all activities and significant materials which may potentially be significant pollutant sources. Plans must include: (a) A site map, or topographic map indicating, an outline of the drainage area of the concentrated animal feeding area; each existing structural control measure to reduce pollutants in wastewater and precipitation runoff; and surface water bodies. (b) A written description of materials that are used, stored or disposed of at the CAFO (such as pesticides, cleaning agents, fuels etc.). (c) A list of spills and leaks of toxic or hazardous pollutants that occurred at the facility after the effective date of this permit and have the potential to contribute pollutants to runoff waters. (d) A summary of any existing sampling data describing pollutants in overflow or bypass discharges.

Other information to consider, if applicable, include the manner and frequency in which pesticides, herbicides, fertilizers or soil enhancers are applied at the site and an evaluation of significant spills or leaks of conventional, toxic and hazardous pollutants based on a description of the materials released, an estimate of the volume of the release, the location of the release, and any remediation or cleanup measures taken. The Agency requests comments on what other types of information may be appropriate for source identification purposes.

(ii) Practices and Program Elements to Control Pollutants. The second major section of the pollution prevention plan addresses practices and program elements to reduce pollutants in areas identified as having high potential for runoff contamination. Potential ground water impacts should also be considered by operators when designing storage devices. Operators designing storage devices, such as ponds, should be aware of federal requirements for the protection of groundwater and comply with those requirements.

Wastewater Management Controls. Each facility covered by this permit

[1] For a complete description of the BMP survey, see "NPDES Best Management Practices Guidance Document", U.S. EPA, December 1979, EPA-600/9-79-045.

must develop a description of management controls appropriate for the facility, and implement such controls. The appropriateness and priorities of controls in a plan shall reflect identified potential sources of pollutants at the facility. The following management controls must be addressed:

• Wastewater retention facilities. The permittee will have documentation at the facility site supporting the management controls used to contain wastewaters and storm waters from the concentrated feeding areas. The pollution prevention plan must include all calculations used to support design, construction, and size of the retention structures, as well as, all factors and calculations used in determining land application rates, acreage, and crops. This documentation may be developed by the State Soil Conservation Service. This documentation will allow the Agency to determine if the containment structure is adequately designed to contain the required 25 year, 24-hour event.

• Liner Requirement. Over most of EPA Region 6 surface water flow is sustained throughout much of the year by ground water inflow. As a result, contaminants which leak from containment structures to the ground water will typically move underground toward local streams and rivers where they will be discharged and affect wager quality. The permittee must have on site documentation that no hydrologic connection exists between the contained wastewater and surface waters of the United States. The permittee is given two options to demonstrate the lack of hydrologic connection: (1) Document that there can be no significant leakage from the retention structure; or (2) Document that leakage from the retention structure would not migrate to surface waters. These two options allow the permittee to take into account the natural situation beneath the retention structure (such as natural materials or isolated ground waters). The permittee should be aware that man made connections from ground waters to surface waters via wells and irrigation must be taken into account when determining hydraulic connections. Where the permittee cannot document that no hydrologic connection exists, the containment structure must have a liner which will prevent the potential contamination of surface waters. Liners for retention structures should be constructed in accordance with good engineering practices and must be certified by a Professional Engineer. Liner maintenance shall include inspection at least once/2 years. Liner design may be in accordance with a SCS plan. Although the requirement for liner installation is to protect surface waters, the permittee is strongly encouraged to provide a liner for any containment structures to comply with existing regulations for ground water protection.

• Manure and Pond Solids Handling and Land Application. Requirements in the permit and Pollution Prevention Plan do not allow the storage of wastes where there is the potential for inadvertent release to any surface water. Storage areas cannot be placed so as to be threatened by flood waters. Wastes cannot be applied to land during or immediately preceding rain events, so as to avoid runoff of the wastes. Land application rates and procedures that are developed for the facility in accordance with State guidelines may be used as part of the Pollution Prevention Plan for land application of wastes. The pollution prevention plan must ensure and document that procedures for the handling and disposal of manure and pond solids complies with the permit requirements. Documentation of waste storage protocol, land application procedures, and manure handling activities are required by the permit to ensure that none of the wastes or resulting pollutants are discharged to a water of the U.S. Permittees are encouraged to apply the manure as fertilizer. However, where local water quality is threatened by phosphorus, the permittee is cautioned to limit the application rate to the crop uptake rate of phosphorus.

Preventive Maintenance. A preventive maintenance program involves inspection and maintenance of all management devices (cleaning oil/water separators, catch basins) as well as inspecting and testing equipment and systems to uncover condition that could cause breakdowns or failures resulting in discharges of pollutants to surface wasters. A good preventive maintenance program includes identifying equipment or retention systems used; periodically inspecting or testing equipment and retention system; adjusting, repairing, or replacing items; and maintaining complete records on the equipment and retention systems.

Good Housekeeping. Good housekeeping requires the maintenance of a clean, orderly facility. Good housekeeping includes establishing housekeeping protocols to reduce the possibility of mishandling chemicals or equipment and training of employees in housekeeping techniques. Pollutants that may enter retention structures at CAFO sites due to poor housekeeping include oils, grease, paints, gasoline, truck washdown, solvents litter, debris and sanitary wastes. Management plans can address the following to prevent the discharge of these pollutants:

• Designate areas for equipment maintenance and repair;

• Provide waste receptacles at convenient locations and provide regular collection of wastes;

• Locate equipment washdown areas on site, provide appropriate control of washwaters;

• Provide protected storage areas for chemicals, paints, solvents, fertilizers and other potentially toxic materials; and

• Provide adequately maintained sanitary facilities.

Spill Prevention and Response Procedures. Areas where potential spills can occur, and their accompanying drainage points should be identified clearly in the pollution prevention plan. Where appropriate, specifying material handling procedures and storage requirements in the plan should be considered. Procedures for cleaning up spills should be identified in the plan and made available to the appropriate personnel. The necessary equipment to implement a clean up should be available to personnel. Spill response procedures should avoid discharging to retention structures unless necessary because of immediate safety considerations.

Sediment and Erosion Prevention. The plan shall identify areas which, due to topography, activities, or other factors, have a high potential for significant soil erosion, and identify measures to limit erosion.

Employee Training. Employee training programs are necessary to inform personnel at all levels of responsibility of the requirements of the permit and of the procedures outlined in the pollution prevention plan. Training should address topics such as spill response, good housekeeping and material management practices. A pollution prevention plan should identify periodic dates for such training.

Inspections and Recordkeeping. The facility operator or a responsible person will be named in the Pollution Prevention Plan to develop the plan and do the required inspections and reporting. This person will assist the facility manager in its implementation, maintenance, and revision. The activities and responsibilities of the designated person should address all aspects of the facility's pollution prevention plan. However, EPA prefers that the facility manager, not the employee have overall responsibility

and accountability for the quality of the pollution prevention plan, to ensure adequate implementation of the plan.

• Recordkeeping and Internal Reporting Procedures. A record keeping system ensures adequate implementation of the pollution prevention plan. Incidents such as spills, leaks and improper dumping, along with other information describing the quality and quantity of discharges should be included in the records. Inspections and maintenance activities such as cleaning oil and grit separators or catch basins should be documented and recorded. Records of releases of a hazardous substance, describing each release that has occurred at any time after the date of three years prior to the issuance of this permit, measures taken in response to the release, and measures taken to prevent recurrence must be included in plans.

• Visual Inspections. Qualified plant personnel should be identified to inspect designated equipment and storage areas. Typical inspections should include examination of pipes, pumps, tanks, supports, foundations, dikes, and drainage ditches, Material handling areas should be inspected for evidence of, or the potential for, pollutants entering the drainage system. A tracking or follow up procedure must be used to ensure that appropriate and adequate response and corrective actions have been taken. Records of inspections are required to be maintained.

• Site Inspection. It is important that the permittee conduct annual inspection of the facility site to verify that the description of potential pollutant sources is accurate, the drainage map has been updated or otherwise modified to reflect current conditions; and the controls outlined in the pollution prevention plan to reduce pollutants are being implemented and are adequate. Records documenting significant observation made during the site inspection must be retained as part of the pollution prevention plan for a minimum of three years. This allows the Agency access to records of permit compliance much the same as all self reported information required in NPDES permits.

Special requirements for discharges through municipal separate storm sewer systems serving a population of 100,000 or more. Facilities discharging through a municipal separate storm system serving a population of 100,000 or more shall comply with applicable requirements in the municipality's storm water management program developed under NPDES permits issued for the discharge of the municipal separate storm sewer system that receives the CAFO facility's discharge, provided the operator of the CAFO has been notified of such conditions.

Consistency with other plans. Facilities which have requirements for retention capacity and land application of wastes provided in site specific plans developed by SCS, or Best Management Practices (BPM) Programs developed by a professional consultant may incorporate any part of such plans into the pollution prevention plan by reference.

Additional Information

Additional technical information on BMP's and the elements of a BMP plan is contained in the publication entitled "NPDES Best Management Practices Guidance Document," U.S. EPA, June 1981. Site or Pollutant-Specific Best Management Practices. Information more specific to CAFO is available through Farm*A*Syst (national contact ph.# 608–262–0024) developed for EPA by the University of Wisconsin.

Additional BMPs are included in appendix A of the permit. These BMP's are recommended for use by the operator of CAFO facilities, but are not required. Their inclusion in the permit is meant to provide the facility operator with guidance and recommendations. A decision to use the BMPs in appendix A is voluntary and should take into account site specific factors.

The permittee is also provided with reference application rates and manure nitrogen values in Appendices B&C to help the operator with the documentation of land application procedures. The information provided in the appendices of the permit are for reference only. Site specific information should be taken into account prior to the land application of any CAFO wastes. Additional information on manure content and application rates can be obtained through the Soil Conservation Service and the Texas Agricultural Extension Service. The operator may also wish to review the information available through the American Society of Agricultural Engineers, 2959 Niles Road, St. Joseph, Michigan 49085–9559.

(D) State Standards. In accordance with section 301(b)(1)(C) of the CWA these permits must include all State standards and rules which may be more stringent than the federal requirements. The following requirements are promulgated State Standards for CAFOs in Texas and as such will be included in the final NPDES general permit for CAFOs in the State of Texas: Subchapter B Livestock and Poultry Production Operations Rules Effective 4/1/87 part 321.36. Ground Water Protection, and part 321.40 Edwards Aquifer. These sections of the Texas rules establish liner requirements for all new CAFOs; and prohibit the establishment of any new CAFO on the recharge zone of the Edwards Aquifer.

d. Recording and reporting. Monitoring data serves a number of functions under the NPDES program. Discharge monitoring data can be used to assist in the evaluation of the risk of the discharge by indicating the types and the concentrations of pollutant parameters in the discharge. Discharge monitoring data can be used in evaluating the potential of the discharge to cause or contribute to water quality impacts and water quality standards violations.

Discharge monitoring data can also be used to evaluate the effectiveness of controls on reducing pollutants in discharges. This function of monitoring can be important in evaluating the effectiveness of source control or pollution prevention measures as well as evaluating the operation of end-of-pipe treatment units. Where numeric or toxicity effluent limits are incorporated into permits, discharge monitoring data plays a critical role by providing EPA and authorized NPDES States with data to evaluate compliance with effluent limits. The use of discharge monitoring data to determine permit compliance greatly enhances the ability of EPA and authorized NPDES States to enforce permit conditions.

Permits for industrial process discharges and discharges from POTWs traditionally have incorporated numeric and/or toxicity effluent limitations as conditions. Monitoring reports for these discharges provide a direct indication whether the discharge complies with permit conditions. However, permits for feedlots will require no discharge of pollutants into waters of the U.S. Monitoring data will be required only in case of discharge from the retention system.

If, for any reason, there is a discharge, the permittee is required to notify the Director and the State in writing within 14 days of the discharge from the retention facility, and to document the following information to the on-site pollution prevention plan: (a) A description and cause of the discharge, including an estimate of the discharge volume; (b) The period of discharge, including exact dates and times, and, if not corrected the anticipated time the discharge is expected to continue, and steps being taken to reduce, eliminate and prevent recurrence of the discharge (c) Analysis of the conventional pollutants in the discharge; (d) If caused by a precipitation event, information

from the nearest National Weather Service station concerning the size of the precipitation event; (e) Measurements taken for the purpose of the monitoring shall be representative of the monitored discharge.

The discharge must be analyzed for all conventional pollutants associated with feedlot operation. Numbers of Fecal Coliform bacteria are an indicator of the amount of pathogenic bacteria that is being discharged to the receiving water. Total Suspended Solids (TSS) is a common pollutant found in discharges that can have significant impacts on receiving waters. Oxygen demand (COD and BOD5) will help the permitting authority evaluate the oxygen depletion potential of the discharge. Five day biological Oxygen Demand (BOD5) is the most commonly used indicator of oxygen demand. The pH will provide important information on the potential availability of metals to the receiving flora, fauna, and sediment. In some cases it will provide information regarding material management. Total phosphorus, Total Kjeldahl Nitrogen (TKN), nitrate plus nitrite nitrogen are measures of nutrients that can impact water quality. In addition, the monitoring requirements contain a requirement to monitor pollutants the facility uses or stores on site which have a potential to be in the discharge. (Example: frequently used cleaning agents and pesticides.)

All discharge information and data will be available to the Director upon request. As a part of the pollution prevention plan, this information will also be available to the public upon reasonable request. Signed copies of monitoring reports shall be submitted to the State if requested. The permittee must notify the Director in writing within 14 days of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements. The permittee must also report all instances of noncompliance in writing within 14 days to the Director in accordance with this permit.

The draft general permits have an "adverse climate conditions" provision allowing a discharger to submit a description of why samples could not be collected in lieu of sampling data when the discharger is unable to collect samples due to climatic conditions which prohibit the collection of samples including weather conditions that create dangerous conditions for personnel (such as local flooding, high winds, hurricane, tornadoes, electrical storms, etc.).

The requirements for the type of samples taken vary depending on the nature of the retention structure. A minimum of one grab sample may be taken from the over-flow structure for discharges from holding ponds or other impoundments. Feedlots are not required to submit monitoring reports unless specifically requested by the Director. These dischargers must maintain sampling data collected during the term of the permit. The Agency requests comments as to whether this data should be submitted to the appropriate State Agency (e.g. State Health Departments). The Agency also requests comment as to whether facilities covered by these permits should be required to submit to the appropriate State agency an annual certification that a pollution prevention plan has been developed for the site and is being implemented.

The permittee is required to retain records of all monitoring information, copies of all reports required by this permit, and records of all data for a period of at least three years from the date of the measurement, report, or application. This period may be extended by request of the Director.

e. Standard permit conditions. This permit includes all of the standard conditions used in NPDES permitting to insure proper implementation of the permit requirements.

5. Reopener clause

Where a potential exists for the State to develop numeric limitations which are more stringent, or control a pollutant not controlled by permit, the region reserves the right to revise, revoke or modify the permit to meet any applicable water quality standards.

6. Definitions

Region 6 requests comments on any terms referred to in this permit which are not defined in Part VIII of the permit.

V. Economic Impact

EPA believes that this proposed general permit will be economically beneficial to the regulated community. It provides an economic alternative to the individual application process the facilities covered by this permit would otherwise have to face. The requirements are consistent with those already imposed by effective federal regulations and State requirements. The suggested management practices and pollution prevention plans give the regulated facilities guidelines which may save them time and money.

An economic analysis was done when the BAT requirements for the national effluent guidelines (40 CFR 412) were published. Region 6 believes that the same economic and technology rationale would apply to the smaller facilities covered by this print. Also, Region 6 believes that this permit is the most economical permitting option available to the smaller facilities with NPDES application requirements.

If, however, any smaller facilities believe that this economic analysis for the guidelines containment technology would not apply to their facility and that they would be able to achieve necessary water quality requirements of the receiving stream, through the use of biological or equivalent treatment systems, those smaller facilities may apply for individual permit coverage.

It may be in many situations unlikely, however, that an operator of a CAFO would be able to meet water quality standards economically with a biological treatment system. Pollutant content of the wastewaters from the containment structures can have as much as 50 to 600 mg/l of nitrogen. Region 6 believes the biological treatment needed to reduce the pollutant and pathogen loadings to meet water quality standards set for a particular receiving water could prove excessively expensive.

VI. Compliance with Other Federal Regulations

A. National Environmental Policy Act

Finding of No Significant Impact

To all interested government agencies and public groups: Pursuant to the requirements of section 511(c) of the Clean Water Act and the environmental review procedures of the U.S. Environmental Protection Agency (EPA) at 40 CFR part 6, "Procedures for Implementing the Requirements of the Council on Environmental Quality on the National Environmental Policy Act" for the National Pollutant Discharge Elimination System (NPDES) New Source Program, the EPA has conducted a general environmental review of the following proposed action:

(A) *Proposed action.* Issuance of General NPDES Permit for New Source Concentrated Animal Feeding Operations (CAFO), defined in 40 CFR part 122 appendix B and 40 CFR part 412, and located in all parts of the State. The discharge of process wastewater from these facilities is subject to the requirements of 40 CFR 122.23 and 40 CFR part 412, and to the application of the new source performance standards promulgated on February 14, 1974, under the NPDES permit program.

(B) Environmental effects generally associated with CAFOs. Potential Impacts to Surface Waters. Impacts to surface water recourses can result from

runoff from the feedlot area. The runoff may be contaminated with pesticides used in veterinary treatments, nutrients and bacteria from the fecal matter, rations and mineral blocks. Other contaminants in the runoff may result from improper disposal of dredge material from the waste water holding ponds, and from erosion resulting from uncontrolled runoff.

Potential Impacts to Groundwater Resources. Contaminants in unlined holding ponds may seep into groundwater resources. Possible contaminants contained in the ponds include the nutrient nitrogen and bacteria from fecal materials, and pesticides used in veterinary treatments.

Potential Impacts to the Ambient Air Quality. The primary impacts to the ambient air quality derive from the methane emissions and the noxious odors to adjoining areas.

(C) Mitigation and general pollution prevention. The new source performance standards effluent guidelines for CAFOs require that there be no discharge of process waste water pollutants to navigable waters. the process waste water treatment pond is to be designed, constructed and operated to contain all process generated waste waters plus the runoff from a 25-year, 24-hour rainfall event for the location of the point source. The holding pond will be lined with either a synthetic or a clay liner to prevent groundwater contamination. Buffer zones will be used to separate feed lot areas from residential areas to mitigate for odor and visual impacts. CAFOs will be required to use Best Management Practices for control of pollution.

(D) Finding. On the basis of a general review of the impacts commonly associated with CAFO operations and other available information, the EPA has made a preliminary finding that the issuance of the General NPDES Permit will not result in any significant adverse environmental impacts and that an Environmental Impact Statement (EIS) is not required. This Finding of No Significant Impact (FNSI) covers CAFO facilities in place and operating at the time of issuance of the General Permit. Applicants for CAFO facilities proposed after the issuance of the General Permit shall submit an appropriate EID and undergo environmental review prior to the start of construction.

Comments regarding this decision not to prepare an EIS will be accepted during the thirty (30) day period following the public notice of this preliminary FNSI. The finding will become final with the issuance of the final permit decision. Address all comments to: Ellen Caldwell (6W–PS), U.S. Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202–2733, Telephone: (214) 655–7190.

New CAFO subject to National Effluent Guidelines (40 CFR part 412) will be required to complete an Environmental Review with the Agency prior to coverage under the permit. New facilities are any CAFO not in operation as of the issuance date of the permits. These facilities, prior to construction must complete an environmental review with this Agency. The initial form to start the process of an environmental review has been provided in Appendix D of the permit. The permittee must have documentation of "No Significant Impact" or a completed Environmental Impact Statement, in accordance with an environmental review conducted by the Agency, as a condition of coverage under the permit. This documentation must be retained on site.

B. Endangered Species Act

The permits proposed today will authorize no discharge other than upsets and bypasses, which are relatively infrequent occurrences. Accordingly, EPA Region 6 determines that issuance of these permits is unlikely to adversely affect any listed threatened or endangered species or designated critical habitat. EPA Region 6 has submitted copies of these permits to the U.S. Fish & Wildlife Service. During the comment period for these proposed permits, Region 6 will be undergoing consultation with Fish & Wildlife Service regarding this determination.

C. Executive Order 12291

The Office of Management and Budget has exempted this action from the review requirements of Executive order 12291 pursuant to section 8(b) of that order.

D. Paperwork Reduction Act

EPA has reviewed the requirements imposed on regulated facilities in this general permit under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The information collection requirements of this permit have already been approved by the Office of Management and Budget in submissions made for the NPDES permit program under provisions of the Clean Water Act.

E. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, EPA is required to prepare a Regulatory Flexibility Analysis to assess the impact of rules on small entities. No Regulatory Flexibility Analysis is required, however, where the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

Today's proposed general permit would generally make the NPDES regulations more flexible and less burdensome for permittees. Accordingly, I hereby certify, pursuant to 5 U.S.C. 605(b), that these amendments, if promulgated, and that these general permits, when issued, will not have a significant impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 122

Administrative practice and procedure, Reporting and record keeping requirements, Water pollution control.

Authority: Clean Water Act, 33 USC 1251 *et seq.*

Dated: July 1, 1992.

W.B. Hathaway,

Acting Regional Administrator.

NPDES General Permit for Discharges From Concentrated Animal Feeding Operations—Table of Contents

Part I. Coverage Under this Permit

A. Permit Area.

The permit covers all areas administered by Region 6 in the State of _____[2].

B. Coverage and Eligibility

Unless excluded from coverage in accordance with paragraph C or D below, owners or operators of animal feeding operations that are defined in 40 CFR 122 appendix B as concentrated animal feeding operations, and are subject to the requirements of 40 CFR 122.23 are authorized under the terms and conditions of this permit. Owners or operators of Concentrated Animal Feeding Operations (CAFOs) are not required to submit a notice of gain coverage under this permit unless specified by the Director.

1. Permittees must retain on site a copy of the permit and the pollution prevention plan as required by this permit.

2. Other Animal Feeding Operations. All other animal feeding operations are encouraged to comply with this permit.

3. CAFO's With Expired Permits or Pending Applications. All facilities which have expired permits and have reapplied in accordance with 40 CFR 122.21(d); and all facilities which have submitted applications in accordance with 40 CFR 122.21(a) are automatically covered by the terms of this permit. A permittee may request to be excluded from coverage by this permit by applying for an individual permit in accordance with 40 CFR 122.28(b)(3)(iii).

4. Additional Coverage Requirements for Concentrated Animal Feeding Operations Established After Permit Issuance. New CAFO facilities subject to National Effluent Guidelines (40 CFR 412) shall, prior to discharging, complete the form provided in Appendix D of this permit. The form must be sent to: Mr. Hector Pena (6E–FF), U.S. EPA Region 6, 1445 Ross Ave., Suite 1200, Dallas, Texas 75202.

The permittee shall have documentation of "No Significant Impact" or a completed Environmental Impact Statement, in accordance with an environmental review conducted by this Agency, as condition of coverage under this permit. This documentation shall be obtained and retained on site prior to any discharge from the CAFO.

C. Limitations on Coverage.

The following discharges from Concentrated Animal Feeding Operations (CAFOs) are not covered by this permit;

1. CAFO's that the Director has determined to be or may reasonably be expected to be contributing to a violation of a water quality standard, and which have been notified by the Director to file for an individual or alternative general permit in accordance with Part I, D. (below) of this permit.

2. CAFO's that discharge all their runoff and wastewater to a sanitary sewer system which discharges in accordance with an NPDES permit.

3. Concentrated Duck feeding operations established prior to 1974 which are not subject to new source performance standards.

D. Requiring an Individual Permit or an Alternative General Permit

1. The Director may require any person authorized by this permit to apply for and obtain either an individual NPDES permit or an alternative NPDES general permit as provided in 40 CFR 122.28(b)(2)(i). The Director will notify the owner or operator in writing that a permit application is required. If an owner or operator fails to submit in a timely manner an individual NPDES permit application required by the Director under this paragraph, then the applicability of this general permit to the individual NPDES permittee is automatically terminated at the end of the day specified for application submittal.

2. Any owner or operator authorized by this permit may request to be excluded from the coverage of this permit by applying for an individual permit as provided in 40 CFR 122.28(b)(2)(iii). The owner or operator shall submit an individual application (Form 1 and Form 2B) to the Director with reasons supporting the request.

3. When an individual NPDES permit is issued to an owner or operator otherwise subject to this permit, or the owner or operator is approved for coverage under an alternative NPDES general permit, the applicability of this permit to the facility is automatically terminated on the effective date of the individual permit or on the date of approval for coverage under the alternative general permit. When an individual NPDES permit is denied to an owner or operator otherwise subject to this permit, or the owner or operator is denied for coverage under an alternative NPDES general permit, the permittee is automatically reinstated under this permit on the date of such denial, unless otherwise specified by the Director.

E. Notification Requirements

Owners or operators of facilities authorized by this permit shall notify the appropriate State Agency that they are covered by this permit. State notification must be made within 30 days of issuance of this permit or upon completion of a new facility.

F. Permit Expiration

Coverage under this permit will expire five (5) years from the date of issuance. The conditions of an expired permit continue in force until the effective date of a new permit (40 CFR 122.6).

Part II. Effluent limitations

A. Discharge Limitations For All Categories Other Than Duck Facilities Prior to 1974

The following limitations establish the quantity or quality of pollutants or pollutant properties which may be discharged by a CAFO in compliance with this permit after application of the best available technology economically achievable or new source performance standards: There shall be no discharge of process waste water pollutants to waters of the U.S.

Limitations established for concentrated duck feeding operations which began operations after the establishment of New Source Performance Standards in 1974 are subject to the new source performance standard: There shall be no discharge of process waste water pollutants to waters of the U.S.

B. Releases in Excess of the 25 year, 24-hr Storm Event

Process waste pollutants in the overflow may be discharged to navigable waters whenever rainfall events, either chronic or catastrophic, cause an overflow of process waste water from a facility designed, constructed and operated to contain all process generated waste waters plus the runoff from a 25-year, 24-hour rainfall event for the location of the point source. There shall be no effluent limitations on discharges from detention structures constructed and maintained to contain the 25 year, 24 hour storm event if the discharge is the result of a rainfall event which exceeds the design capacity and proper maintenance.

[2] Note That the Agency is Noticing distinct draft general permits in Louisiana, New Mexico, Oklahoma, Texas.

Retention structures shall contain all process wastewaters plus the 25 year, 24 hour storm event. Structures shall be sufficient to contain all wastewaters even in case of high winds.

Part III. Special Conditions, Management Practices, and Other Non-Numeric Limitations

A. Prohibition on Unauthorized Substances

All discharges to containment structures shall be composed entirely of wastewaters from the proper operation and maintenance of a CAFO and the precipitation from the animal feeding operation areas. The disposal of any materials (other than discharges associated with proper operation and maintenance of the CAFO) into the containment structures are prohibited by this permit.

B. Proper Operation and Maintenance Requirements

The facilities covered by this permit are required to document the attainment of Best Available Technology (BAT) and Best Conventional Technology (BCT), and all Best Management Practices (BMPs) used to comply with the effluent limitations in this permit. Such documentation shall be included in the Pollution Prevention Plan (PPP) outlined in Part II. C. of this permit and shall be made available to the Director upon request. Where applicable, equivalent measures contained in a site specific Animal Waste Management Plan prepared by the State Soil Conservation Service (SCS), may be substituted for the BMP and PPP requirements in this Part of the permit. Where provisions in the SCS plan are substituted for applicable BMPs or portions of the PPP, the PPP must refer to the appropriate section of the SCS plan. If the pollution prevention plan contains reference to the SCS plan, a copy of the SCS plan must be kept on site.

1. Operating and Maintenance Record. The owner/operator shall construct, operate and maintain the feedlot in compliance with this permit. Where the information contained in a SCS plan is equivalent to the required documentation below, the records for this permit may include reference to the SCS plan as documentation of permit compliance. The following records shall be maintained at the feedlot and shall be made available to the Director upon request.

a. Calculations required for application rates and retention facility capacity;

b. Documentation of existing retention facility capacity;

c. Date log indicating monthly inspection of the retention facility for structural integrity and maintenance;

d. Date log indicating weekly inspection of wastewater level in retention facility, including specific measurement of wastewater level;

e. If the waste (manure) is sold or given to other persons for beneficial use, maintain a log of: date of removal from the feedlot; name of hauler; and amount, in dry tons, of waste removed from the feedlot. Incidental amounts, given away by the passenger pick-up truck load, need not be recorded.

2. Best Management Practices. The following Best Management Practices (BMPs) shall be utilized by concentrated animal feeding owners/operators, as appropriate, based upon existing physical and economic conditions, opportunities and constraints. Where the provisions in a SCS plan equivalent or more protective the permittee may refer to the SCS plan as documentation of compliance with the BMP's required by this permit.

a. Control facilities must be designed, constructed, and operated to contain all process generated wastewaters and the contaminated runoff from a 25-year, 24-hour rainfall event for the location of the point source. Calculations may also include allowances for surface retention, infiltration, and other site specific factors. Waste control facilities must be constructed, maintained and managed so as to retain all contaminated rainfall runoff from open lots and associated areas, process generated wastewater, and waste.

Open lots and associated wastes shall be isolated from outside surface drainage by ditches, dikes, berms, terraces or other such structures designed to carry peak flows expected at times when the 25 year, 24-hr. rainfall event occurs.

Retention facilities shall not be built in a wetland, fresh water plays, or other water of the U.S. except in compliance with a 404 Permit form the U.S. Corp of Engineers.

(1) Retention Capacity Calculations. Retention facilities shall be sized based upon the following procedure. Calculate the retention capacity based upon the 25-year 24-hour rainfall event by summing:

(A) The runoff volume from open lot surfaces plus

(B) The runoff volume from areas between open lot surfaces and the retention facilities plus

(C) The rainfall multiplied by the area of the retention facility and wastes basin plus

(D) The volume of rainfall from any roofed area that is directed into the retention facilities plus

(E) All waste and process generated wastewater produced during a period of time not less 21 days including:

(i) Volume of wet manure plus;

(ii) Volume of water used for manure/waste removal plus;

(iii) Volume of cleanup/washwater plus;

(iv) Other water such as drinking water that enters the retention facilities.

Where appropriate, site specific information should be used to determine retention capacity and land application rates. All site specific information used must be documented in the Operation and Maintenance Record.

(2) Retention Facility Embankments. The following minimum design standards are required for construction and/or modification of a retention facility: Soils used in the embankment shall be free of foreign material such as trash, brush, and fallen trees. The embankment shall be constructed in lifts or layers no more than six inches thick and compacted at optimum moisture content. Any variation in embankment construction must be accompanied by compaction testing. Compaction tests must be certified by a Professional Engineer. All embankment walls shall be protected by planting grass or the use of riprapping (or its equivalent).

(3) Retention facilities shall be equipped with either irrigation or evaporation or liquid removal systems capable of dewatering the retention facilities. Operators using pits, ponds, or lagoons for storage and treatment of storm water, manure and process generated wastewater, including flush waste handling systems, shall maintain in their wastewater retention facility sufficient freeboard to contain rainfall and rainfall runoff from a 25-year rainfall event. The operator shall restore freeboard for a 25-year rainfall event with 21 days of any rainfall event or accumulation of wastes or process generated wastewater which reduces such freeboard, weather permitting. Equipment capable of dewatering the wastewater retention structures of waste and/or wastewater with 21 days following any rainfall event which encroaches on the volume of the pond(s) required to accommodate the rainfall and runoff resulting from the 25-year rainfall event shall be at the site available for use at all times.

(5) Permanent markers (measuring device) shall be maintained in the wastewater retention facilities to show the volume required for a 25-year rainfall event within the containment

ponds. The marker shall be visible from the top of the levee.

(6) Where site specific variations are warranted, the permittee must document these variations and their appropriateness. Concentrated animal feeding operations constructing a new or modifying an existing wastewater retention facility should insure that all construction and design is in accordance with good engineering practices.

b. No flowing surface waters (e.g. rivers, streams, canals) shall come into direct contact with the animals confined on the CAFO. Fences may be used to restrict such access.

c. Wastewater retention facilities or holding pens may not be located in the 100-year flood plain unless the facility is protected from inundation and damage that may occur during that flood event.

d. Wastewater retention facilities, holding pens or waste/wastewater disposal sites may not be located closer than 500 from a public water well nor 250 feet from a private water well.

e. Waste handling, treatment, and management shall not result in the destruction or adverse modification of the critical habitat of endangered or threatened species, or contribute to the taking of endangered or threatened species of plant, fish or wildlife.

f. Waste handling, treatment, and management shall not create a public health hazard; shall not result in groundwater contamination; shall conform with State guidelines and/or regulations.

g. Solids, sludges, manure, or other pollutants removed in the course of treatment or control of wastewater shall be disposed of in manner such as to prevent any pollutant from such materials from entering waters of the United States.

h. All wastes from dipping vats, pest and parasite control units, and other facilities utilized for the application of potentially hazardous or toxic chemicals shall be handled and disposed of in a manner such as to prevent any pollutant from such materials from entering the waters of the United States.

i. Pesticide Use. The operator shall prevent the discharge of pesticide contaminated waters into waters of the U.S. The permittee shall notify the Director in writing within 14 if any discharge of pesticides into waters of the U.S. occurs.

j. Dead animals shall be properly disposed of within 24 hours. Animals may be buried (a minimum of 150 feet from any drainage way with a minimum of 3 feet of cover), composted in accordance with health department standards, or removed from the premises.

k. Management of wastes. Collection, storage, and disposal of liquid and solid waste should be managed in accordance with recognized practices of good agricultural management. The economic benefits derived from agricultural operations carried out at the land disposal site shall be secondary to the proper disposal of waste and wastewater.

3. *Pollution prevention plans.* A pollution prevention plan shall be developed for each facility covered by this permit. All containment structures have the potential to discharge to waters of the U.S. Pollution preventions plans shall be prepared in accordance with good engineering practices and should include measures necessary to limit pollutants in runoff to the containment structures. The plan shall identify potential sources of pollution which may reasonably be expected to affect water quality in the case of discharge from the CAFO. In addition, the plan shall describe and ensure the implementation of practices which are to be used to assure compliance with the limitations and conditions of this permit. Where a SCS plan has been prepared for the facility, the pollution prevention plan may refer to the SCS plan when the SCS plan documentation contain equivalent requirements for the facility. When the permittee uses a SCS plan as partial completion of the pollution plan, the SCS plan must be kept on site. The land shall identify a specific individual(s) at the facility who is responsible for developing the implementation, maintenance, and revision of the pollution prevention plan. The activities and responsibilities of the pollution prevention personnel should address all aspects of the facility's pollution prevention plan.

a. The plan shall be signed by the owner or other signatory authority in accordance with Part VI.L. (Signatory Requirements), and be retained on site in accordance with Part VI.E. (Retention of Records) of this permit. It shall be completed within 180 days of the effective date of this permit (and updated as appropriate), or, in the case of new facilities, prior to operation. Plans shall provide for compliance with the terms of the plan within 365 days of the effective date of this permit, or, in the case of new facilities, upon commencement of operations. Facilities designated by the Director as concentrated animal feeding operations in accordance with Part I. B. 2. (Designated "Concentrated" Animal Feeding Operations) shall complete the plan within 180 days, and provide for compliance with 365 days after notification from the Director that the facility is to be considered a concentrated animal feeding operation. The owner or operator of a facility covered by this permit shall make plans available upon request to the Director, or authorized representative.

b. If the plan is reviewed by the Director, or authorized representatives, the Director, or authorized representative, may notify the permittee at any time that the plan does not meet one or more of the minimum requirements of this part. After such notification from the Director, or authorized representative, the permittee shall make changes to the plan within 30 days after such notification unless otherwise provided by the Director.

c. The permittee shall amend the plan whenever there is a change in design, construction, operation, or maintenance, which has a significant effect on the potential for the discharge of pollutants to the waters of the United States of if the pollution prevention plan proves to be ineffective in achieving the general objectives of controlling pollutants in discharges from CAFO's. Amendments to the plan may be reviewed by the Director or authorized representative.

d. The plan shall include, at a minimum, the following items:

(1) *Description of Potential Pollutant Sources.* Each plan shall provide a description of potential sources which may reasonably be expected to add pollutants to runoff drained from the facility. Each plan shall identify all activities and materials which may potentially be pollutant sources. Each plan shall include:

(a) A site map, or topographic map indicating, an outline of the drainage area of the concentrated animal feeding area; each existing structural control measure to reduce pollutants in wastewater and precipitation runoff; and surface water bodies.

(b) A written description of materials that are used, stored or disposed of at the CAFO (such as pesticides, cleaning agents, fuels etc.).

(c) A list of spills and leaks of toxic or hazardous pollutants that occurred at the facility after the effective date of this permit and have the potential to contribute pollutants to runoff waters.

(d) A summary of existing sampling data describing pollutants in overflow or bypass discharges.

(2) *Wastewater Management Controls.* Each facility covered by this permit shall develop a description of management controls appropriate for the facility, and implement such controls. The appropriateness and priorities of controls in a plan shall reflect identified potential sources of

pollutants at the facility. The plan shall include a the location and a description of existing structural and non-structural control measures to contain wastewaters; and a description of any treatment the wastewater receives. The description of management controls shall address the following minimum components, including a schedule for implementing such controls:

(a) *Wastewater retention facilities.* The permittee must have on site documentation supporting the management controls used to contain wastewaters and storm waters from the concentrated feeding areas. Retention facilities shall be equipped with either irrigation or evaporation systems capable of dewatering the retention facilities, or a regular schedule of wastewater removal by contract hauler. The pollution prevention plan must include all calculations used to support design, construction, and size of the retention structures, as well as, all factors and calculations used in determining land application rates, acreage, and crops. Where economically achievable, best management practices provided in Part III.B. should be used. If land application is utilized for disposal of wastewater, the following requirements shall apply: (i) Discharge of irrigated wastewater off the application site is prohibited; (ii) When irrigation disposal of wastewater is used, facilities shall not exceed the nutrient uptake of the crop coverage with any land application of wastewater and/or manure; (iii) Wastewater shall not be irrigated when the ground is frozen or saturated or during rainfall events; (iv) Irrigation practices shall be managed so as to prevent ponding or puddling of wastewater on the site, contamination of ground or surface water, and the occurrence of nuisance conditions such as odors and flies; (v) Facilities including ponds, pipes, ditches, pumps, diversion and irrigation equipment shall be maintained to insure ability to fully comply with the terms of this permit and the pollution prevention plan; (vi) Adequate equipment or land application area shall be available for removal of such waste and wastewater as required to maintain the retention capacity of the facility for compliance with this permit.

(b) *Liner Requirement.* The permittee shall have, at the CAFO facility, site specific documentation that no hydrologic connection exists between the contained wastewater and surface waters of the United States. Where the permittee cannot document that no hydrologic connection through ground water exists, the ponds, lagoons and basins of the retention facilities must have a liner which will prevent the potential contamination of surface waters.

(i) Documentation of No Hydrologic Connection. A lack of hydrologic connection can be demonstrated by: (1) Documenting that there will be no significant leakage from the retention structure; or (2) documenting that any leakage from the retention structure would not migrate to surface waters. At a minimum this documentation should be certified by a Professional Engineer or equivalent ground water professional and must include:

—Hydraulic conductivity and thickness of the natural materials underlying and forming the walls of the containment structure up to the wetted perimeter;
—Depth to ground water;
—Hydraulic conductivity, thickness and lithology of the uppermost aquifer;
—A piezometric (ground water contour) map of the uppermost aquifer covering the area in and around the structure and including the nearest flowing stream.

For documentation of no significant leakage, in-situ materials must, at a minimum, meet the hydraulic conductivity and thickness described in Part II.B.3.d(2)(b)(iii) (below). Documentation that leakage will not migrate to a surface water must include maps showing ground water flow paths, or that the leakage enters a confined environment.

(ii) Liner construction. Liners for retention structures should be constructed in accordance with good engineering practices and shall have hydraulic conductivities no greater than 1×10^{-7} cm/sec. Liner thickness should be 1.5 feet or greater.

(iii) Liner maintenance. Where a liner is installed to prevent hydrologic connection the permittee must maintain the liner to prevent hydrologic connection to surface waters, and must be installed to inhibit infiltration of wastewaters. Liner maintenance shall include inspection at least once/2 years or a leak detection system. Liner inspection will include the removal of all liquids and accumulated solids from the structure followed by a visual inspection for cracks and other signs of physical deterioration. Where regular liner inspection is not established and no leak detection system is installed, monitoring wells must be installed on the down gradient slope where the potential exists for down gradient migration to impact surface waters. Samples from monitoring wells must be analyzed for total nitrates, nitrite, ammonia, and total phosphorus at least once/quarter. Data from the monitoring wells must be kept on site for three years with the pollutions prevention plan. The first year's sampling shall be considered the baseline data and must be retained on site for the life of the facility.

(c) *Manure and Pond Solids Handling and Land Application.* Storage and land application of manure shall not cause a discharge of pollutants to waters of the United States or cause a water quality violation in waters of the United States. Discharge (run-off) of waste from the application site is prohibited. At all times, sufficient volume shall be maintained within the control facility to accommodate manure, other solids, wastewaters and rain waters (runoff) from the concentrated animal feeding areas. A minimum of two feet of freeboard above a normal pond level should be included in the facility design. The pollution prevention plan must ensure and document that procedures for the handling and disposal of manure and pond solids complies with the following requirements: (i) Storage and/or surface disposal of manure in the 100-year flood plain is prohibited. (ii) Run off from manure storage piles must be retained on site. (iii) Waste shall not be applied to land when the ground is frozen or saturated or during rainfall events. (iv) Waste manure shall be applied to suitable land at appropriate times and rates. Timing and rate of applications to shall be in response to crop needs, assuming usual nutrient losses, expected precipitation and soil conditions; (Permittees are encouraged to apply manures and pond solids as fertilizer. However where local water quality is threatened by phosphorus, the permittee should limit the application rate to the crop uptake rate of phosphorus.) (v) Disposal of manure shall not cause or contribute to the taking of any endangered or threatened species of plant, fish, or wildlife; nor shall such disposal interfere with or cause harm to migratory water fowl. (vi) All necessary practices to minimize waste manure transport to watercourses shall be utilized and documented to the plan. (vii) Adequate manure storage capacity based upon manure and waste production and land availability shall be provided. Do not stockpile manure near watercourses. (viii) Use edge-of-field, grassed strips to separate eroded soil and manure particles from the field runoff, and avoid land subject to excessive erosion.

(3) *Preventive Maintenance.* A preventive maintenance program shall involve inspection and maintenance of

all runoff management devices (cleaning separators, catch basins) as well as inspecting and testing facility equipment and containment structures to uncover conditions that could cause breakdowns or failures resulting in discharges of pollutants to surface waters. Operators will provide routine maintenance to their control facilities in accordance with a schedule and plan of operation to ensure compliance with permit limitations and state water quality criteria. This schedule and plan will be written and include a description of the pollution control equipment and structures used, operating schedules for dewatering the pollution control facilities and disposing of the accumulated solids, and a description of where the removed liquid and solid wastes are to be disposed to prevent entry to any waters of the United States.

(4) *Good Housekeeping.* Good housekeeping requires the maintenance of a clean, orderly facility. Housekeeping procedures that would result in the basic overall cleanliness of the facility shall be outlines in the pollution prevention plan.

(5) *Spill Prevention and Response Procedures.* Areas where potential spill can occur, and their accompanying drainage ponds shall be identified clearly in the pollution prevention plan. Where appropriate, the pollution prevention plan should specify material handling procedures and storage requirements. Procedures for cleaning up spills shall be identified in the plan and made available to the appropriate personnel. The necessary equipment to implement a clean up should be available to personnel.

(6) *Sediment and Erosion Prevention.* The plan shall identify areas which, due to topography, activities, or other factors, have a high potential for significant soil erosion, and identify measures to limit erosion.

(7) *Employee Training.* Employee training programs shall inform personnel at all levels of responsibility of the components and goals of the pollution prevention plan. Training should address topics such as spill response and clean up, good housekeeping and material management practices. A pollution prevention plan shall identify periodic dates for such training.

(8) *Inspections and Recordkeeping.* The operator or the person named in the pollution prevention plan as the individual responsible for drafting and implementing the plan shall be responsible for inspections and recordkeeping.

Recordkeeping and Internal Reporting Procedures. Incidents such as spills, or other discharges, along with other information describing the pollution potential and quantity of the discharge shall be included in the records. Inspections and maintenance activities shall be documented and recorded. These records must be kept on site for a minimum of three years.

Visual Inspections. The authorized person shall inspect designated equipment and plant areas. Material handling areas shall be inspected for evidence of, or the potential for, pollutants entering the drainage system. A tracking or follow-up procedure shall be used to ensure that appropriate action has been taken in response to the inspection.

Site Inspection. A complete inspection of the facility shall be done and a report made documenting the findings of the inspection made at least once/year. The inspection shall be conducted by the authorized person named in the pollution prevention plan, to verify that the description of potential pollutant sources is accurate; the drainage map has been updated or otherwise modified to reflect current conditions; and the controls outlined in the pollution prevention plan to reduce pollutants are being implemented and are adequate. Records documenting significant observation made during the site inspection shall be retained as part of the pollution prevention plan. Records of inspections shall be maintained for a period of three years.

d. Special requirements for discharges through municipal separate storm sewer systems serving a population of 100,000 or more. Facilities discharging through a municipal separate storm system serving a population of 100,000 population or more shall comply with applicable requirements in the municipality's storm water management program. CAFO facilities must comply with the requirements in the municipal storm water management program developed under an NPDES permit issued for the discharge of the municipal separate storm sewer system that receives the CAFO facility's discharge, provided the operator of the CAFO has been notified of such conditions.

e. Permittees must evaluate the applicability of the Recommended Management Practices listed in appendix A of this permit. Where applicable and economically feasible the operator should include these practices in the pollution prevention plan.

4. Other Legal Requirements. No condition of this permit shall release the permittee from any responsibility or requirements under other statutes or regulations, Federal, State or Local.

Part IV. Monitoring and Reporting Requirements

A. Discharge Notification

If, for any reason, there is a discharge, the permittee is required to notify the Director and the State in writing within 14 working days of the discharge from the retention facility and to document the following information to the on site pollution prevention plan:

1. The permittee shall monitor the discharge and include in the pollution prevention plan the following information in writing within 14 days of becoming aware of such discharge.

a. A description and cause of the discharge, including an estimate of the discharge volume;

b. The period of discharge, including exact dates and times, and, if not corrected the anticipated time the discharge is expected to continue, and steps being taken to reduce, eliminate and prevent recurrence of the discharge;

c. Sample Type. A minimum of one grab sample shall be taken from the over-flow structure for discharges from holding ponds or other impoundments. Sampling and analysis of the discharge samples must be in accordance with EPA approved methods for water analysis listed in 40 CFR 136.

d. Analysis of discharge samples must include the following: Fecal Coliform bacteria; 5-day Biological Oxygen Demand (BOD5); Total Suspended Solids (TSS); pH; temperature; total phosphorus; Kjeldahl nitrogen; nitrate nitrogen; and any pesticide or waste which the operator has reason to believe could be in the discharge.

e. Measurements taken for the purpose of monitoring shall be representative of the monitored discharge.

f. If caused by a precipitation event(s), information from the nearest available weather station concerning the size of the precipitation event.

g. Sampling Waiver. The permittee must document description of why samples could not be collected in lieu of samples data when the discharger is unable to collect samples due to climatic conditions which prohibit the collection of sampling including weather conditions that create dangerous conditions for personnel (such as local flooding, high winds, hurricane, tornadoes, electrical storms, etc.).

2. All discharge information and data will be made available to the Director upon request.

3. *Written Notification.* Signed copies of monitoring reports shall be submitted to the Director if requested at the following addresses: (*Address Here*).

B. Anticipated Noncompliance

The permittee shall give advance notice to the Director of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

C. Other Noncompliance Reporting

The permittee shall report all instances of noncompliance within 14 working days to the Director in accordance with Part IV.A. (Discharge Notification) of this permit.

d. Penalties for Falsification of Reports

The Act provides that any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including reports of compliance or noncompliance shall, upon conviction be punished by a fine of not more than $10,000 per violation, or by imprisonment for not more than six months per violation, or by both.

E. Retention of Records

The permittee shall retain copies of all records required by this permit for a period of at least three years from the date reported. This period may be extended by request of the Director at any time.

F. Availability of Reports

In addition to data determined to be confidential under 40 CFR Part 2, information submitted to EPA may be claimed as confidential by the submitter. If no claim is made at the time of submission, EPA may make the information available to the public without further notice. As required by the Act, however, Notices of Intent, permits, and effluent data shall not be considered confidential and any claims of confidentiality for this information will be denied.

G. Bypass of Treatment Facilities

1. Notice:

a. Anticipated bypass. If the permittee knows in advance of the need for a bypass, he shall submit to EPA and the State written notice, if possible at least ten days before the date of the bypass.

b. Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass to the Director as required under Part IV.A.

2. Prohibition of bypass.

a. Bypass is prohibited and the Director may take enforcement action against a permittee for a bypass, unless:

i. The bypass was unavaoidable to prevent loss of life, personal injury, or severe property damage;

ii. There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if the permittee could have installed adequate backup equipment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

iii. The permittee submitted notices as required under Part IV.A.,B.,C. (above), & H. (below) of this section.

b. The Director may approve an anticipated bypass, after considering its adverse effects, if the Director determines that it will meet the three conditions listed in Part IV G.2.a. (above) of this section.

H. Upset Conditions

For facilities with biological treatment systems who wish to establish the affirmative defense of an upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence, that:

a. An upset occurred and that the permittee can identify the specific cause(s) of the upset;

b. The permitted facility was at the time being properly operated;

c. The permittee has notified the Director of the upset as required under Part IV.A.,B., and C.; and

d. The permittee commenced remedial measures required in a timely manner.

In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.

I. Planned Changes

The permittee shall give notice to the Director, as soon as possible, of any planned physical alterations or additions to the permitted facility. Notice is required only when the alteration or addition could significantly change the nature or increase the quantity of pollutants discharged.

J. Duty to Provide Information

The permittee shall furnish to the Director, within a reasonable time, any information which the Director may request to determine compliance with this permit. The permittee shall also furnish to the Director, upon request, copies of records required to be kept by this permit.

K. Other Information

When the permittee becomes aware that he failed to submit any relevant facts or submitted incorrect information in the Notice of Intent or in any other report to the Director, he shall promptly submit such facts or information.

L. Signatory Requirements

All reports or information submitted to the Director shall be signed and certified.

1. All reports or information shall be signed by the facility owner or operator/manager where the authority to sign documents has been assigned or delegated to the operator/manager.

a. For facilities owned by a corporation: By a responsible corporate officer. For the purpose of this permit, a responsible corporate office means (i) a president, secretary, treasurer, or vice president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation.

b. For a facilities owned by a partnership or sole proprietorship: by a general partner or the proprietor respectively.

c. For facilities owned by a municipality, State, Federal, or other public agency: by either a principal executive officer or ranking elected official.

2. All reports required by the permit and other information requested by the Director shall be signed by a person described above or by a duly authorized representative of that person. A person is a duly authorized representative only if the authorization is made in writing by a person described above, and the authorization specifies either an individual or a position having responsibility for the overall operation.

3. Certification. Any person signing a document under this section shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

V. Standard Requirements

A. Duty to Comply

The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Act and is grounds for enforcement action; for loss of authorization to discharge under this general permit; or for denial of a permit renewal application.

B. Inspection and Entry

The permittee shall allow the Director, or an authorized representative of EPA including the State, upon the presentation of credentials and other documents as may be required by law, to:

1. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit:

2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit, and

4. Sample or monitor at reasonable times, for the purpose of assuring permit compliance or as otherwise authorized by the Act, any substances or parameters at any location.

C. Toxic Pollutants

The permittee shall comply with effluent standards of prohibitions established under section 307(a) of the Act for toxic pollutants within the time provided in the regulations that establish these standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

D. Penalties for Violations of Permit Conditions

The Act provides that any person who violates a permit condition implementing sections 301, 302, 306, 307, 308, 319, or 405 of the Act is subject to a civil penalty not to exceed $25,000 per day for each violation. Any person who willfully or negligently violates permit conditions implementing sections 301, 302, 306, 307, 308, 318, or 405 of the Act, or any permit condition or limitation is subject to a fine of not less than $2,500, nor more than $25,000 per day of violation, or by imprisonment for not more than one year, or both.

E. Continuation of the Expired General Permit

An expired general permit continues in force and effect until a new general permit is issued.

F. Need to Halt or Reduce Activity not a Defense

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

G. Duty to Mitigate

The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

H. Proper Operation and Maintenance

The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance includes the operation of backup or auxiliary facilities or similar systems only when necessary to achieve compliance with the conditions of the permit.

I. Penalties for Falsification of Monitoring Systems

The Act provides that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this permit shall, upon conviction, be punished by fines and imprisonment described in Part V.D. (Penalties for Violation of Permit Conditions) of this permit.

J. Oil and Hazardous Substance Liability

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under section 311 of the Act.

K. Property Rights

The issuance of this permit does not convey any property rights of any sort, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of Federal, State or local laws or regulations.

L. Severability

The provisions of this permit are severable, and if any provision of this permit, or the application of any provision of this permit to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.

M. State Laws

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable State law or regulation under authority preserved by section 510 of the Act.

N. Permit Actions

This permit may be modified, revoked or reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated non-compliance does not stay any permit condition.

VI. Reopener Clause

If effluent limitations or requirements are established or modified in an approved State Water Quality Management Plan or Waste Load Allocation and if they are more stringent than those listed in this permit or control a pollutant not listed in this permit, this permit may be reopened to include those more stringent limits or requirements.

VII. Definitions

1. "Animal feeding operation" means a lot or facility (other than an aquatic animal production facility) where the animals have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period, and the animal confinement areas do not sustain crops, vegetation, forage growth, or post-harvest residues in the normal growing season. Two or more animal feeding operations under common ownership are a single animal feeding operation if they adjoin each other, or if they use a common area or system for the disposal of wastes.

2. "Animal unit" means a unit of measurement for any animal feeding operation calculated by adding the following numbers: The number of slaughter and feeder cattle and dairy heifers multiplied by 1.0, plus the number of mature dairy cattle multiplied by 1.4, plus the number of swine weighing over 55 pounds multiplied by 0.4, plus the number of sheep multiplied

by 0.1, plus the number of horses multiplied by 2.0.

3. "Best Management Practices" (BMP) means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of "waters of the United States". BMPs also include treatment requirements, operating procedures, and practices to control site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

4. "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility.

5. "Concentrated animal feeding operation" means an "animal feeding operation" which meets the criteria in 40 CFR part 122, appendix B, or which the Director designates as a significant contributor of pollution pursuant to 40 CFR 122.23.

Animal feeding operations defined as "concentrated" in 40 CFR part 122, appendix B are as follows:

New and existing operations which stable or confine and feed or maintain for a total of 45 days or more in any 12-month period more than the numbers of animals specified in any of the following categories:

a. 1,000 slaughter or feeder cattle;
b. 700 mature dairy cattle (whether milkers or dry cows);
c. 2,500 swine weighing over 55 pounds;
d. 500 horses;
e. 10,000 sheep or lambs;
f. 55,000 turkeys;
g. 100,000 laying hens or broilers when the facility has unlimited continuous flow watering systems;
h. 30,000 laying hens or broilers when facility has liquid manure handling system;
i. 5,000 ducks; or
j. 1,000 animal units from a combination of slaughter steers and heifers, mature dairy cattle, swine over 55 pounds and sheep;

New and existing operations which discharge pollutants into navigable waters either through a man-made ditch, flushing system, or other similar man-made device, or directly into waters of the United States, and which stable or confine and feed or maintain for a total of 45 days or more in any 12-month period more than the numbers or types of animals in the following categories:

a. 300 slaughter or feeder cattle;
b. 200 mature dairy cattle (whether milkers or dry cows);
c. 750 swine weighing over 55 pounds;
d. 150 horses;
e. 3000 sheep or lambs;
f. 16,000 turkeys;
g. 30,000 laying hens or broilers when the facility has unlimited continuous flow watering systems;
h. 9000 laying hens or broilers when facility has liquid manure handling system;
i. 1,500 ducks; or
j. 300 animal units (from a combination of slaughter steers and heifers, mature dairy cattle, swine over 55 pounds and sheep).

6. "Control facility" means any system used for the retention of all wastes on the premises until their ultimate disposal. This includes the retention of manure, liquid waste, and runoff from the feedlot area.

7. "Feedlot" means a concentrated, confined animal or poultry growing operation for meat, milk, or egg production, or stabling, in pens or houses wherein the animals or poultry are fed at the place of confinement and crop or forage growth or production is not sustained in the area of confinement, and is subject to 40 CFR part 412.

8. "Ground water" means any subsurface waters.

9. "Land application" means the removal of waste solids from a control facility and incorporation into the soil mantle primarily for disposal purposes.

10. "Liner" means any barrier in the form of a layer, membrane or blanket, installed to prevent a hydrologic connection between liquids contained in retention structures and waters of the U.S.

11. "Process wastewater" means any process generated wastewater directly or indirectly used in the operation of a feedlot (such as spillage or overflow from animal or poultry watering systems; washing, cleaning, or flushing pens, barns, manure pits, direct contact swimming, washing, or spray cooling of animals; and dust control) and any precipitation (rain or snow) which comes into contact with any manure or litter, bedding, or any other raw material or intermediate or final material or product used in or resulting from the production of animals or poultry or direct products (e.g., milk, eggs).

12. "Retention Facility" or "Retention Structures" means all collection ditches, conduits and swales for the collection of runoff and wastewater, and all basins, ponds and lagoons used to store wastes, wastewaters and manures.

13. "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

14. "The Act" means Federal Water Pollution Control Act as amended, also known as the Clean Water Act, found at 33 U.S.C. 1251 *et seq.*.

15. "Toxic pollutants" mean any pollutant listed as toxic under section 307(a)(1) of the Act.

16. "Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventative maintenance, or careless or improper operation.

17. "25-year 24-hour rainfall event" means the maximum 24-hour precipitation event with a probable recurrence interval of once in 25 years, as defined by the National Weather Service in Technical Paper Number 40, "Rainfall Frequency Atlas of the United States", May 1961, and subsequent amendments, or equivalent regional or state rainfall probability information developed therefrom.

18. "10-year 24-hour rainfall event" means the maximum 24-hour precipitation event with a probable recurrence interval of once in 10 years, as defined by the National Weather Service in Technical Paper Number 40, "Rainfall Frequency Atlas of the United States", May 1961, and subsequent amendments, or equivalent regional or state rainfall probability information developed therefrom.

Appendix A—Recommended "Best" Management Practices

The best management practices (BMPs) outlined in this Appendix are recommended for the control and abatement of pollutant discharges. Pollution Prevention Plan should include these measures where it is appropriate.

I. Location Standards

This section establishes the minimum standards which should be considered when selecting the site for a new concentrated animal feeding operation.

A. The purpose of this section is to minimize possible contamination of ground and surface waters by defining the characteristics that make an area unsuitable or inappropriate for concentrated animal feeding operations. Permittees should take every precaution to minimize the possibility of exposing the public to nuisance conditions, and to prevent locating of a concentrated animal feeding operation in an area determined to be unsuitable or inappropriate, unless the design, construction, and

operational features of the facility will mitigate the unsuitable site characteristics.

B. When constructing a new facility or a substantial change of an existing facility or developing a waste management plan for a proposed site, the permittee should evaluate whether the design, construction or operational features minimizes possible contamination of surface water and groundwater. In making this evaluation, the permittee should consider the following factors:

1. Active geologic processes such as flooding, erosion, subsidence, submergence and faulting;

2. Groundwater conditions such as groundwater flow rate, groundwater quality, length of flow path to points of discharge and aquifer recharge or discharge conditions;

3. Soil conditions such as stratigraphic profile and complexity, hydraulic conductivity of strata, and separation distance from the facility to the aquifer and/or surface water; and

4. Climatological conditions.

C. Wastewater retention facilities or holding pens should not be located in wetlands. (This prohibition is not applicable to constructed wetlands.)

D. Wastewater retention facilities should not be located in areas overlying regional aquifers unless the regional aquifer is separated from the base of the containment structure by a minimum of 3 feet of material with a vertical hydraulic conductivity not greater than 10^{7} cm/sec or a thicker interval of more permeable material which provides equivalent or greater retardation of pollutant migration. A synthetic membrane liner may be substituted with a minimum of 30 mils thickness and an underground leak detection system with appropriate sampling points.

E. A minimum 500 foot buffer zone should be maintained from the retention facilities and storage areas to the nearest property line. Holding pens should not be located closer than 150 feet to the nearest property line.

II. Retention Structure Design

The permit requires that the facility be constructed and maintained to contain the 25 year, 24-hour storm event. It is important that the retention structures be constructed in accordance with good engineering practices. The following are some design characteristics that the owner/operator should consider in the design of the retention structures:

A. The embankment wall should have a top width of at least 10 feet;

B. Interior and exterior slope of the embankment walls should be no steeper than one foot vertical to three feet horizontal;

C. There should be an emergency freeboard not less than two feet base;

D. The retention facility should be constructed with an emergency spillway or overflow channel to remove water in a controlled manner when the retention facility capacity is exceeded.

E. The permit requires that wastewater containment structures shall be isolated from uncontaminated storm water run-on by berms or diversion terraces. The diverted rainfall runoff should not be diverted onto the property of adjacent landowners without the written permission of such landowners.

III. Surface Water Protection

A. The permit requires that waste control facilities be constructed, maintained and managed so as to retain all contaminated rainfall runoff from open lots and associated areas, process generated wastewater, and waste. Practices to decrease the lot runoff and water volume are as follows:

1. Divert runoff from clean areas above lot by constructing ditches, terraces and waterways above an open lot;

2. Install gutters, downspouts and buried conduits to divert roof drainage; and

3. Provide more roofed area.

4. Decrease open lot surface area;

5. Repair or adjust waterers and water systems to minimize water wastage.

6. Use practical amounts of water for cooling.

7. Use practical amounts of water for cleaning equipment.

8. Recycle water to flush manure from paved surfaces if practical and applicable.

B. Discharging wastewaters or runoff from the concentrated animal areas is prohibited by the permit. Practices to decrease the potential of lot runoff and wastewaters to be discharged to waters of the U.S.:

1. Collect manure more frequently;

2. Eliminate areas that slope in directions such that wastewater/rainfall cannot be collected;

3. Collect and allow wastewater to evaporate; and

4. Collect and evenly apply wastewater to land only during dry weather, and at appropriate agronomic rates.

C. It is a violation of this permit to discharge any solid waste or manure to a water of the U.S. The following practices can help to minimize waste manure transport to watercourses:

1. Do not stockpile manure near watercourses;

2. Provide adequate manure storage capacity based upon manure and waste production and land availability;

3. Apply waste manure to suitable land at appropriate times and rates;

4. Adjust timing and rate of applications to crop needs, assuming usual nutrient losses, expected precipitation and soil conditions;

5. Avoid land subject to excessive erosion;

6. Use edge-of-field, grassed strips to separate eroded soil and manure particles from the field runoff;

7. Utilize off-site areas for manure application in a manner consistent with best managements practices and the requirements of this permit; and

8. Where local water quality is threatened by phosphorus, the permitted should limit the application rate to the crop uptake rate of phosphorus.

D. Feedlot Waste Management for Fly and Odor Control. The following practices for fly and odor control should be utilized by owners/operators concentrated animal feeding operations to minimize associated ordors and insects:

1. Manure-covered surfaces should be kept dry;

2. Dirty, manure covered animals should be prevented;

3. An orderly system for runoff collection and manure handling should be maintained;

4. Waste should be kept dry or flushed regularly from confinement areas to a lagoon or solids separator;

5. Dry manure should be stored in steep piles;

6. Dairies should clean, scrape and wash the drip shed after each milking; and

7. Manure should be removed from the holding pens within five days after animals are removed from a particular lot.

E. All facilities should install a mechanical solids separator and/or a solids settling basin at a point following any wash and/or flush area and immediately prior to the wastewater entering the retention facilities. Solids should be removed from the separator/solids settling basins at least three times per week and stored in a covered area.

F. Owner/operators should collect waste that accumulates along holding pen/open lot fence lines, in feeding lanes and feed storage area on a weekly basis.

IV. Ground Water Protection.

Where the potential exists for the contained wastewaters to contaminate groundwater, the permittee should take every precaution to prevent migration of pollutants to those waters. The permittee should take all action appropriate to avoid the discharge of wastewaters and contaminated runoff waters to surface and ground waters.

A. Where a hydrologic connection to surface exists, the permit requires that the retention basins be lined with materials that will provide resistance to pollution migration. All new or modified wastewater retention facilities should be constructed of compacted or in-situ earthen materials which meet the following minimum requirements:

(1) 30% or more passes through a number 200 mesh sieve;

(2) A liquid limit of 30% or greater;

(3) A plasticity index of 15 or greater;

(4) hydraulic conductivity equal to or less than 1×10^{-7} cm/sec;

(5) Soil compaction will be 95% standard proctor at optimum moisture content; and

(6) A minimum thickness of 1.5 feet.

B. If the wastewater retention facilities are not constructed of suitable materials, then an alternate lining material should be used. Liner materials include flexible membrane linings, asphalt-sealed fabric liners, and bentonite sealants. Completed pond linings should be designed and installed in accordance with good engineering practices.

C. Livestock should be prohibited entry into the retention lagoons, on lagoon dikes and immediate surrounding areas. If livestock are allowed in the retention lagoons, those lagoon linings should be inspected for damage and permittee should certify in the pollution prevention plan that the lining meets the specified criteria.

D. Concentrated animal feeding operations located over drinking water aquifers should install ground water monitoring wells and/or lysimeters to monitor liquid movement through the saturated and unsaturated zones. All wells and/or lysimeters must be installed by licensed water well drillers or qualified professionals according to state requirements.

V. Feedlot Waste Utilization or Disposal By Land Application

The permit prohibits the discharge of irrigated wastewater off the application site. Neither is irrigation permitted when the ground is frozen or saturated or during rainfall events.

A. If land application is utilized for disposal of wastewater, the following good management practices should be followed:

1. When irrigation disposal of wastewater is used, tailwater facilities shall be provided as necessary to prevent the release of applied wastewater;

2. Land to be irrigated should have a slope less than 6%;

3. Irrigation practices shall be managed so as to prevent ponding or puddling of wastewater on the site, contamination of ground or surface water, and the occurrence of nuisance conditions such as odors and flies;

4. Irrigation patterns should allow a 100-foot buffer in the downwind direction or more as needed to prevent wastewater spray from leaving the property;

5. Irrigation application rates should be limited to the most conservative calculation determined by comparing the water budget for the area and crop, and the nutrient uptake of the irrigated crop; and

6. The cover crop of each irrigated area should be harvested at least once a year.

B. Representative soil samples should be taken at least annually from the waste and/or wastewater application site.

1. When soil samples are taken the sampling procedures shall employ accepted techniques of soil science for obtaining representative analytical results.

2. The following depth zones below the ground surface should be sampled: a. 0 to 6 inches; b. 6 to 10 inches; and c. 10 to 30 inches.

3. The samples should be analyzed for nitrate-nitrogen, ammonia nitrogen, total Kjeldahl nitrogen, cation exchange capacity, extractable phosphorus, sodium, magnesium, calcium, sulfur, and electrical conductivity.

C. All solid wastes stockpiles or retained on site should:

1. Be stored under a permanent (structural) or temporary (plastic sheeting) cover so as to be protected from rainfall, and

2. Be isolated from all run-on storm waters by dikes, terraces, berms, ditches, or other similar structures.

D. If land application is utilized for disposal of solid waste in either dried of liquid form, the following requirements shall apply:

1. Land to receive waste should have a slope less than 6%;

2. Waste shall not be spread when the ground is frozen or saturated or during rainfall events;

3. Waste should be incorporated into the soil within 48 hours of application or the owner/operator should maintain a 200 foot buffer zone of grass or other thick vegetation between the disposal areas and the down gradient property line and/or watercourses.

4. Disposal of waste and wastewater should be done in such a manner as to prevent nuisance conditions such as odors and flies. The following procedures should be used to control odors and flies:

a. Apply manure uniformly and in a layer thin enough to insure drying in 5 days or less.

b. Avoid spreading when the wind would blow odors toward populated areas or nearby residences or businesses.

c. Avoid spreading or applying manure immediately before weekends and holidays when people are likely to be engaged in nearby outdoor and recreational activities.

d. Avoid spreading near heavily traveled highways.

e. Spread or apply manure in morning when air is warming and rising rather than in the late afternoon.

f. Where manure is applied to nonvegetated land, incorporate manure into the soil during or within 24 hours of application.

5. Feedlots may sell or give wastes (manure) to other persons for beneficial use. The owner/operator should analyze the wastes (manure) annually for ammonia-nitrogen, nitrate-nitrogen, total Kjeldahl nitrogen, extractable phosphorus and total potassium. The owner/operator should provide each recipient of wastes (manure) written copies of the annual analysis.

Appendix B—Reference Land Application Rates of Wastewater

TABLE 1. NUTRIENT REQUIREMENTS OF CROPS, LBS/ACRE.

Crop	Expected Yield	Nitrogen (lbs/ac)	Phosphorus (lbs/ac)
Corn	75–99 bu/a	75–100	60
	100–149 bu/a	110–165	80
	150–200 bu/a	180–240	80
Cotton	1.0 bales/a	40	40
	1.5 bales/a	60	60
	2.0 bales/a	80	80
	2.5 bales/a	100	80
Grain Sorghum	1500–2000 lbs/a	30–40	20
	2000–4000 lbs/a	40–80	40
	4000–6000 lbs/a	80–120	60
	6000–8000 lbs/a	120–160	80
Wheat	20–30 bu/a	40–60	20
	30–40 bu/a	60–80	40
	40–60 bu/a	80–120	40
	60–80 bu/a	120–160	60
	80–100 bu/a	160–200	60
Coastal Bermuda	Grazing only	100–160	50
	1 cutting + grazing only	160–220	50
	3 cuttings	300–350	100
	4–6 cuttings	400–600	130
Alfalfa	Non-irrigated, annually	20	60
	Irrigated; 6 T/a	20	100
	Irrigated; 8–12 T/a	20	140
Wheat	Light grazing [1]	160	60
	Moderate grazing	200	75
	Heavy grazing	240	80
Sorghum/Sudan	1 cutting or light grazing	80	40
	2 cuttings or medium grazing	160	60
	3 cuttings or heavy grazing	200	80

[1] Fertilizer application rates suggested for grazing wheat pastures are for eastern Texas and Louisiana. Rates for all grazing intensities should be reduced by 10 percent for each 50-mile increment west of Dallas Texas.

Note: Actual fertilizer application rate recommendations are based on the above crop requirements, minus soil nutrient levels identified by a soil test, resulting in recommendations which may be significantly lower than nutrient levels listed in the table.

TABLE 2.—MAXIMUM WASTEWATER APPLICATION RATES IN INCHES

	Expected crop uptake, plant available nitrogen (lbs./ac./yr.) (from table 1)			
	100	200	300	400
	Wastewater application rates (in./acre/yr.)			
Wastewater nitrogen mg/1 *:				
50	10.67	21.33	32.00	42.67
100	5.33	10.67	16.00	21.33
150	3.55	7.11	10.67	14.22
200	2.67	5.33	8.00	10.67
250	2.13	4.27	6.40	8.53
300	1.78	3.56	5.33	7.11
350	1.52	3.05	4.57	6.09
400	1.33	2.67	4.00	5.33
450	1.19	2.37	3.56	4.74
500	1.07	2.13	3.20	4.27
550	0.97	1.94	2.91	3.88
600	0.89	1.78	2.67	3.56

* Nitrogen content of the waste water must be determined by a laboratory test of the wastewater to be land applied. Wastewater used for irrigation should be tested on a regular schedule established in the facilities Pollution Prevention Plan.

Appendix C—Reference Land Application Rates for Manure and Pond Solids

Fertilizer Values of Different Animal Manures [1]

TABLE 1.—POUNDS OF AVAILABLE NITROGEN (N) PER TON OF MANURE

Animal Type	Untreated manure
Dairy Cattle	66
Feeder/Slaughter Cattle	71
Swine	106
Sheep/Lambs/Goats	63
Horses	34
Chickens/Turkeys/Ducks	88
Rabbits	57
Ostrich/Emu	55
Exotic Mammals and Birds	90

Sludge and Animal Waste Recommended Fertilizer Application Rates* and Scheduling for Selected Crops

General Notes

Application rate of sludge or animal wastes should be based on the most limiting rate between nitrogen and phosphorus, unless otherwise noted. the rate of manure land application should reflect the nitrogen or phosphorus already applied to the crop by wastewater irrigation. If the application does not supply sufficient rates of other nutrients, commercial fertilizer may be utilized to provide total needs in accordance with these guidelines.

Notes on Nitrogen Rates

Nitrogen rates indicated are for plant available nitrogen (PAN). Maximum nitrogen application rates shall be reduced by the amount of residual nitrate-nitrogen as indicated by required soil tests. Maximum single nitrogen application shall be 150 lbs/ac PAN. Where allowable PAN application exceeds 150 lbs/ac, split applications must be utilized.

Notes on Soil Testing

Soil samples should be taken and analyzed in the spring prior to planting. If a double crop of wheat is in the rotation, a fall soil sample should be taken and analyzed prior to the fall wheat planting. Samples should represent a maximum of sixty (60) acres and should be composite of a minimum of six (6) core samples. Each core should be a composite of soil over a depth of 0 to 6 inches.

Soybeans

Rate: Nitrogen—250 lbs/ac maximum for animal wastes tested prior to application. 150 lbs/ac maximum for animal wastes without testing.
Phosphorus—20 lbs/ac maximum actual available elemental P. Equivalent to 45 lbs/ac phosphate (P_2O_5).
Potassium—75 lbs/ac maximum actual elemental K. Equivalent to 90 lbs/ac potash (K_2O).
Scheduling: Application is recommended prior to spring planting of soybeans or in split applications during the growing season.

Notes: If soybeans follow winter wheat, soil tests should be performed prior to application.

Winter Wheat

Rate: Nitrogen—100 lbs/ac maximum.
Phosphorus—22 lbs/ac maximum actual available elemental P. Equivalent to 50 lbs/ac phosphate (P_2O_5).
Potassium—50 lbs/ac maximum actual elemental K. Equivalent to 60 lbs/ac potash (K_2O).
Scheduling: Application of phosphorus and potassium is recommended prior to planting. Application of nitrogen is recommended in a split early spring application in February or March. Application of the maximum nitrogen rate in the fall prior to planting is allowed.

Notes: On soils with 70% or greater sand content, nitrogen fertilizer should only be applied as split early spring applications. On any soils, if the full recommended rate is applied in the fall, no supplemental spring booster N is allowed unless the field participates in the Cooperative Extension Service Wheat Monitoring Program and follows N application in accordance with recommendations.

Milo (Grain Sorghum)

Rate: Nitrogen—120 lbs/ac maximum for irrigated fields. 100 lbs/ac maximum for non-irrigated fields.
Phosphorus—26 lbs/ac maximum actual available elemental P. Equivalent to 60 lbs/ac phosphate (P_2O_5).
Potassium—50 lbs/ac maximum actual elemental K. Equivalent to 60 lbs/ac potash (K_2O).
Scheduling: Application should be made in spring prior to planting.

Notes: For double cropping with winter wheat, see notes for soybeans and wheat.

Corn

Rate: *Non-Irrigated.* Nitrogen—125 lbs/ac maximum.
Phosphorus—22 lbs/ac maximum actual available elemental P. Equivalent to 50 lbs/ac phosphate (P_2O_5).
Potassium—84 lbs/ac maximum actual elemental K. Equivalent to 100 lbs/ac potash (K_2O).
Irrigated. Nitrogen—300 lbs/ac maximum for animal wastes tested prior to application. 150 lbs/ac maximum for animal wastes without testing.
Phosphorus—44 lbs/ac maximum actual available elemental P. Equivalent to 100 lbs/ac phosphate (P_2O_5).
Potassium—167 lbs/ac maximum actual elemental K. Equivalent to 200 lbs/ac potash (K_2O).
Scheduling: The recommendation is to apply approximately ⅓ of the N at planting and the remainder as a sidedress. All P and K should be applied at planting.

Notes: For double cropping with wheat, see notes for soybeans and wheat. Note that fertilizer rates shown are maximums and actual rates should be based on realistic yield potentials. The Cooperative Extension Service should be contacted to advise on yields and appropriate rates.

Bermuda Grass

Rate: Nitrogen—300 lbs/ac maximum for animal wastes tested prior to application. 150 lbs/ac maximum for animal wastes without testing.
Phosphorus—35 lbs/ac maximum actual available elemental P. Equivalent to 80 lbs/ac phosphate (P_2O_5).
Potassium—167 lbs/ac maximum actual elemental K. Equivalent to 200 lbs/ac potash (K_2O).
Scheduling: Application should begin just prior (within one month) to breaking dormancy in the spring and continue through the growing season.

Notes: For pastures with both bermuda grass and fescue where the bermuda grass is dominant during the summer months and fescue is dominant during cool months, the total fertilization rate shall not exceed the maximum available for bermuda grass.

Fescue

Rate: Nitrogen—150 lbs/ac maximum for animal wastes tested prior to application. 135 lbs/ac maximum for animal wastes without testing.

[1] These values are for reference only. The permittee should have manure tested for nitrogen and phosphorus on a regular basis if it is to be land applied to crops to avoid over application.

Phosphorus—26 lbs/ac maximum actual available elemental P. Equivalent to 60 lbs/ac phosphate (P_2O_5).

Potassium—44 lbs/ac maximum actual elemental K. Equivalent to 100 lbs/ac potash (K_2O).

Scheduling: Application should begin in late summer to early fall through late fall or early winter and also begin in late winter or early spring through late spring.

Notes: For pastures with both bermuda grass and fescue where the bermuda grass is dominant during the summer months and fescue is dominant during cool months, the total fertilization rate shall not exceed the maximum available for bermuda grass.

Appendix D—Basic Format for Environmental Assessment

This is the basic format for the Environmental Assessment prepared by EPA Region 6 from the review of the applicant's Environmental Information Document (EID) required for new source NPDES permits. Comprehensive information should be provided for those items or issues that are affected; the greater the impact, the more detailed information needed. The EID should contain a brief statement addressing each item listed below, even if the item is not applicable. The statement should at least explain why the item is not applicable.

A. General Information

1. Name of applicant
2. Type of facility
3. Location of facility
4. Product manufactured

B. Description Summaries

1. Describe the proposed facility and construction activity
2. Describe all ancillary construction not directly involved with the production processes
3. Describe briefly the manufacturing processes and procedures
4. Describe the plant size, its history, and the general area

C. Environmental Concerns

1. Historical and Archeological (include a statement from the State Historical Preservation Officer)
2. Wetlands Protection and 100-year Floodplain Management (the Army Corps of Engineers must be contacted if any wetland area of floodplain is affected)
3. Agricultural Lands (a prime farmland statement from the Soil Conservation Service must be included)
4. Coastal Zone Management and Wild and Scenic Rivers
5. Endangered Species Protection and Fish and Wildlife Protection (a statement from the U.S. Fish and Wildlife Service must be included)
6. Air, Water and Land Issues: quality, effects, usage levels, municipal services used, discharges and emissions, runoff and wastewater control, geology and soils involved, land-use compatibility, solid and hazardous waste disposal, natural and man-made hazards involved
7. Biota concerns: Floral, faunal, aquatic resources, inventories and effects
8. Community Infrastructures available and resulting effects: social, economic, health, safety, educational, recreational, housing, transportation and road resources

Basic Environmental Information Document Guidelines for New Source Category Industries—EPA Region 6

I. General Information

A. Name of Applicant and Proposed Facility: _____

B. Description of Site and Location: _____

C. Description of Project, Product and Process: _____

[FR Doc. 92-17132 Filed 7-21-92; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 92-146, RM-8019]

Radio Broadcasting Services; Mammoth Lakes, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by Mammoth Mountain FM Associates, Inc., licensee of Station KMMT(FM), Mammoth Lakes, California, seeking the substitution of Channel 293B1 for Channel 292A and modification of its license accordingly to specify operation on the higher power channel. Coordinates for this proposal are 37-37-40 and 119-01-56.

Petitioner's modification proposal complies with the provisions of § 1.420(g) of the Commission's rules. Therefore, we will not accept competing expressions of interest in the use of Channel 293B1 at Mammoth Lakes, or require the petitioner to demonstrate the availability of an additional equivalent class channel.

DATES: Comments must be filed on or before September 8, 1992, and reply comments on or before September 23, 1992.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: David A. Digerness, President, Mammoth Mountain FM Associates, Inc., P.O. Box 1284, Mammoth Lakes, CA 93546.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 92-146 adopted June 29, 1992, and released July 16, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1714 21st St., NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92-17205 Filed 7-21-92; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 663

[Docket No. 9207782178]

Pacific Coast Groundfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule.

SUMMARY: NOAA issues this proposed rule to implement conservation and

management measures as prescribed in proposed Amendment 6 to the Fishery Management Plan for the Pacific Coast Groundfish Fishery (FMP). This rule would establish a license limitation limited entry program for the commercial groundfish fishery based on the issuance of gear-specific Federal permits. The intended effect of this proposed rule is to promote conservation and improve stability and economic viability of the fishery industry, by limiting or reducing harvesting capacity in the Pacific Coast Groundfish Fishery.

DATES: Comments on the proposed rule must be received on or before August 31, 1992.

ADDRESSES: Comments on the proposed rule, Amendment 6, or supporting documents should be sent to Mr. Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, Sand Point Way NE., BIN C15700, Seattle, WA 98115–0070; or Mr. E. Charles Fullerton, Director, Southwest Region, National Marine Fisheries Service, 501 West Ocean Boulevard, suite 4200, Long Beach, CA 90802–4213.

Copies of Amendment 6, the Supplemental Environmental Impact Statement and the Regulatory Impact Review (RIR)/Initial Regulatory Flexibility Analysis (IRFA) are available from Larry Six, Executive Director, Pacific Fishery Management Council, 2000 SW. First Avenue, suite 420, Portland, OR 97201.

Comments on the information collection requirements that would be imposed by this rule should be sent to Mr. Rolland A. Schmitten or Mr. E. Charles Fullerton, at the addresses above, and to the Office of Information and Regulatory Affairs of the Office of Management and Budget, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at 206–526–6140, Rodney McInnis at 310–980–4040, or the Pacific Fishery Management Council at 503–326–6352.

SUPPLEMENTARY INFORMATION:

Background

Amendment 6 to the FMP was prepared by the Pacific Fishery Management Council (Council) under the provisions of the Magnuson Fishery Conservation and Management Act (Magnuson Act) as amended, 16 U.S.C. 1801 *et seq.* A notice of availability for the proposed Amendment was filed with the Office of the Federal Register on June 9, 1992. Copies of Amendment 6 are available from the Council upon request at the address given above.

Domestic landings from the Pacific Coast Groundfish Fishery were relatively stable, averaging about 30,000 metric tons (mt) annually, until the early 1970s when they began a fairly steady increase. By 1976, when the Magnuson Act was passed, annual groundfish landings had reached 60,000 mt, and by 1982, when the FMP was implemented, total landings (excluding foreign and joint venture catch) had peaked at 116,000 mt.

A major reason for this rapid growth in groundfish landings was a substantial buildup in harvesting capacity that greatly exceeded the sustainable production capacity of the groundfish resource taken in traditional fisheries. Harvesting capacity increased as newly constructed vessels and vessels displaced from other fisheries entered the fishery. The number of trawl vessels alone rose from 286 in 1977 to 472 in 1979. Furthermore, improved electronic, navigational, and fish-finding equipment significantly increased the harvesting efficiency of the fleet. The result was that in just a few years the Pacific Coast Groundfish Fishery had progressed from harvesting surplus production, from generally healthy or underharvested fish stocks, to the point of excessive capacity with major stocks having been fished down to maximum sustainable yield (MSY) levels.

The fishing down of groundfish stocks to MSY levels combined with harvesting capacity in excess of that required to take the available resource have led to an increase in the number and complexity of regulations that constrain the economic performance of the existing fleets. As fleet capacity has increased, species yielding high rates of return have increasingly become subject to targeting. In order to protect the resource, quotas have been imposed at the Council's recommendation. As harvesting capacity continued to increase due to the fishery's profitability, increased harvest rates have reduced the time required to reach quotas. In order to maintain a flow of product throughout the entire year, a system of trip landing and frequency limits, as well as quotas and closures, has been imposed at the Council's recommendation. Trip limits and quotas have resulted in the inability of many individual vessels to utilize fully their harvesting capacity. However, these measures do not prevent fleet capacity from expanding (and thus harvest rates from increasing) through the entry of additional vessels into the fishery. If fleet capacity continues to expand or if stocks begin to decline, progressively lower trip limits and longer closures will be necessary, thereby further restricting the utilization of fleet capacity. Trip limits may produce some desirable results such as extending the season, but trip limits do not effectively check expansion of fleet harvesting capacity and the dissipation of potential fishery profits that occur with the entry of new vessels.

Additionally, trip limits create other resource management problems such as unreported mortality through discarding fish caught in excess of trip limits, and highgrading as fishermen try to maximize the value of their catch under restrictive trip limits. Similarly, season closures when quotas are reached created unreported discard mortality.

The Council proposed Amendment 6 in order to begin to address directly the issue of increasing amounts of excess and unutilizable fleet harvesting capacity. The amendment would institute a license limitation program based on the issuance of Federal permits to control the overall fleet harvest capacity of the three major gear types (trawl, longline, and fish pot) that account for the vast majority (over 90 percent) of the Pacific Coast Groundfish harvest. It should be noted that "fish pot" as used throughout Amendment 6 refers to traps and pots and is defined in 50 CFR part 663, the regulations governing the Pacific Coast Groundfish Fishery, as "trap (or pot)" gear.

The following are the goals and objectives for the limited access program. The primary objective addresses the overcapacity problem directly while the secondary objectives address the ways in which the Council intends that effort limitation regimes will promote the achievement of the FMP's goals and objectives.

Goals

The goals for the Pacific coast groundfish fishery limited entry program are to improve stability and economic viability of the industry while recognizing historic participation, meeting groundfish management objectives, and providing for enforceable laws.

Primary Objective

The primary objective of the limited entry program is to limit or reduce harvesting capacity in the Pacific coast groundfish fishery.

Secondary Objectives

In pursuit of the primary objective, the following secondary objectives will be addressed:

Economic: Promote long-term economic stability. Increase net returns from the fishery. Allow flexibility for combination (multiple-gear) vessels.

Management: Stabilize management regimes by reducing need for frequent in-season changes. Reduce the cost of management. Reduce by catch and waste. Encourage effort in underutilized species.

Enforcement: Promote cost-effective enforcement by reducing need for frequent changes and tight trip limits. Promote logistically viable enforcement by minimizing need to use regulatory management measures such as trip limits or subarea closures.

Social: Recognize and accommodate historical participation of those investing their lives and resources in the fishery. Maintain a mechanism for fishery entrance/exit and flexibility for change in the fleet. Reduce conflicts between user groups by limiting or reducing effort competition for the same resource. Provide a stable supply of groundfish to the public at a reasonable price.

Description of Amendment 6

Amendment 6 is intended to control the capacity of the groundfish fishing fleet in three main ways: (1) Limiting the overall number of vessels; (2) limiting the number of vessels using each of the three major gear types; and (3) limiting increases in vessel harvest capacity by limiting vessel length. Although Amendment 6 signifies a major step forward in controlling fleet capacity, currently used regulatory management measures such as trip landing and frequency limits will continue to be necessary, at least in the short term, to restrict usable vessel capacity.

Amendment 6 divides the Pacific coast commercial groundfish fishery into two segments. The first segment is the limited entry fishery consisting of vessels using trawl, longline, and/or trap (or pot) gear that are issued limited entry permits. The second segment is the open access fishery consisting of vessels using all other gear (called "exempted" gear in Amendment 6), as well as vessels that do not have limited entry permits endorsed for use of longline or trap (or pot) gear but that make small landings with longline or trap (or pot) gear. Vessels landing groundfish in the open access segment must comply with any trip landing and frequency limits established for the open access fishery. Allocations of groundfish may be made to the limited entry and open access fisheries based on their historic harvest levels during a specific "window period." Such allocations likely would result in 90 to 95 percent of the allowable groundfish harvest being allocated to the limited entry fishery. The implementation date for the limited entry program is January 1, 1994. If approved and implemented, the limited entry program could be modified, or even abolished, by subsequent amendment to the FMP.

Beginning January 1,1994, a Federal permit would be required to participate in the limited entry segment of the fishery. Permits would be endorsed for one or more of three gear types (trawl, longline, and trap (or pot)), with four possible types of endorsement for each gear type. For purposes of the limited entry program, Portuguese longline (commercial vertical hook-and-line) is considered a type of exempted gear. Accordingly, the term "longline", as used throughout this notice of proposed rulemaking, does not include Portuguese longline. Vessels meeting specific minimum landing requirements (MLRs) with a particular gear during the qualifying "window period" (July 11, 1984, through August 1, 1988) would receive "A" endorsements for that gear. Generally, "A" endorsements are the only transferable endorsements. Endorsements may not be transferred separately from the permit to which they were made. An adjustment period is provided for vessels that landed some groundfish prior to August 1, 1988, but do not meet the MLRs for an "A" endorsement, through the issuance of a non-transferable "B" endorsement. A "B" endorsement allows the vessel to participate in the limited entry fishery through 1996, when all "B" endorsements will expire. Those vessels under construction, conversion, or that were purchased during the window period, and as a result were unable to meet the MLRs, are provided an opportunity to demonstrate their commitment to participate in the groundfish fishery through the issuance of "provisional A" endorsements. "Provisional A" endorsements can be upgraded to "A" endorsements if specific "upgrade" requirements are met for 3 consecutive years. "Designated Species B" endorsements, valid for a single year, allow vessels to harvest underutilized species if the vessels with permanent limited entry permits do not intend to harvest the entire allowable catch.

More than one type of gear endorsement may be affixed to a limited entry permit. When the limited entry fishery is open, a vessel fishing under a limited entry permit may also fish with open access gear (exempted gear and longline or trap (or pot) gear for which an endorsement is not held). However, all fishing with open access gear will be subject to regulations (trip limits, etc.) applicable to the open access fishery and all catch will count against the limited entry quota. A vessel with a limited entry permit may also participate in the open access fishery when the limited entry fishery is closed, but not with gear for which its limited entry permit is endorsed.

No more than one limited entry permit will be issued for each qualifying vessel. Permits will be issued only to the current owner of the vessel, unless the previous owner has reserved, by the express terms of a written contract by which vessel ownership is transferred, the right to the limited entry permit, or if a vessel that would have qualified for an endorsement was totally lost prior to initial issuance of a limited entry permit.

All limited entry permits must be renewed annually and will expire if not renewed each year.

A size endorsement (length overall) on each permit will prevent an owner from increasing the length of a vessel for which the permit is issued by more than 5 feet. Two or more limited entry permits with "A" gear endorsements for the same type of limited entry gear may be combined to qualify for a permit with a larger size endorsement. The size endorsement on the new "combined" vessel's permit will be determined by a process to be developed by the NMFS Northwest Regional Director (Regional Director) in consultation with the Council and with the professional advice of marine architects and other qualified individuals. In the case of a vessel endorsed for trawl gear, when the length of the vessel is smaller by more than 5 feet than the originally endorsed length, the permit will be reissued with a size endorsement for the smaller length.

Limited entry permits may be transferred to other vessels and owners; however, the permits will continue to be restricted by size and gear endorsements. Non-transferable endorsements will expire with the transfer of the permit.

"A" Endorsements

"A" endorsements are primarily intended for those vessels with significant involvement in the Pacific Coast groundfish fishery during the July 11, 1984, to August 1, 1988, window period. The purpose of the window period is to provide a 4-year period encompassing both good and bad years in the groundfish and other West Coast fisheries, during which individual vessel owners could demonstrate present participation, historic participation, and a significant dependence on the Pacific Coast groundfish fishery. August 1, 1988,

was the date announced by the Council and NOAA as the date after which entry into a limited entry program, under development by the Council, might be prohibited. The purpose of the cutoff date was to prevent further over-capitalization of the fishery by discouraging persons from entering the fishery only on the speculation that they might qualify for a valuable permit that could later be sold at a profit.

"A" endorsements are transferable with the permit and are valid for all groundfish species managed under the FMP. An "A" endorsement expires upon failure to renew the limited entry permit to which it is affixed. A vessel's dependence and significant involvement in the groundfish fishery is determined by meeting the MLR for one or more gear types during the window period. The MLR for each gear type is:

Trawl: At least 9 separate days in which over 500 pounds a day of any groundfish species (except Pacific whiting) caught with groundfish trawl gear are landed or delivered; or a total of 450 mt of landings or deliveries of any groundfish species (except Pacific whiting) caught with groundfish trawl gear; or 17 separate days in which over 500 pounds a day of Pacific whiting caught with groundfish trawl gear are landed or delivered; or a total of 3,750 mt of landings or deliveries of Pacific whiting caught with groundfish trawl gear.

Longline: At least 6 separate days in which over 500 pounds a day of any groundfish species caught with longline gear are landed or delivered; or a total of 37.5 mt of landings or deliveries of any groundfish species caught with longline gear.

Trap (or pot): At least 5 separate days in which over 500 pounds a day of any groundfish species caught with trap (or pot) gear are landed or delivered; or a total of 150 mt of landings or deliveries of any groundfish species caught with trap (or pot) gear.

In order to limit the issuance of permits to bona fide groundfish fishermen, and ensure that salmon and shrimp fishermen who may land some groundfish incidental to salmon and shrimp fishing operations do not qualify for groundfish limited entry permits, any landing that includes salmon or shrimp will not count toward meeting the MLRs for a limited entry permit. Shrimp fishermen will still be allowed a bycatch of groundfish; and salmon trollers are allowed to harvest groundfish in the open access fishery because troll great is an exempt gear.

Amendment 6 has a special provision for issuing limited entry permits with "A" endorsements to vessels participating in small limited entry fisheries controlled by local governments, in existence as of July 11, 1991, and having negligible impacts on the groundfish resource. Use of these permits will be restricted to vessels that are operating in conformance with the local program. These "limited" permits may be transferred between vessels operating in the program, but may not be used to increase the number of vessels in the program.

For a small limited entry fleet to be eligible for certification, a representative must apply to the NMFS Northwest Regional Director. The Regional Director, after receiving a recommendation from the Council, must determine that the fleet: (1) Has negligible impact on the overall groundfish resource; and (2) operates in a manner consistent with the goals and objectives of Amendment 6. After making this determination, the Regional Director may incorporate the fleet into the limited entry fishery and set an upper limit on the amount of groundfish the fleet may land.

The small limited entry fleet provision was added by the Council in order to provide for the continued participation of small local groundfish vessels with unique social and cultural histories, such as the Newport Beach, California, dory fleet, which currently operates under a local program that limits the size and number of vessels that may participate.

"Provisional A" Endorsements

"Provisional A" endorsements are designed primarily for individuals who purchased a vessel near the end of the window period, or had a vessel under construction or conversion during the window period and, as a result, are unable to meet the MLR for an "A" endorsement. This non-transferable endorsement recognizes the financial investment and intent to participate in the groundfish fishery demonstrated during the window period and subsequently shown by meeting specific "upgrade" criteria.

A vessel owner who contracted to have a vessel constructed or converted would qualify for a "provisional A" endorsement if: (a) A contract for part of the construction (including laying of the keel) or conversion (including a structural modification necessary to make the vessel capable of fishing with limited entry gear) was signed, and earnest money of 10 percent or more of the value of the contract was paid to August 1, 1988; (b) the contract is not transferred from the contract holder between August 1, 1988, and the issuance of the "provisional A" endorsement; (c) for vessels qualifying under the construction provision, no landing of any species of fish was made anywhere by the vessel prior to July 11, 1984, and for vessels qualifying under the conversion provision, no landing was made anywhere between the time conversion began and July 11, 1984; and (d) at least one landing of any species of fish was made anywhere prior to September 30, 1990, for vessels qualifying under the construction provision, and at least one landing of any species of fish was made anywhere after conversion began and prior to September 30, 1990, for vessels qualifying under the conversion provision.

A vessel owner who constructed or converted a vessel would qualify for a "provisional A" endorsement by meeting the same requirements described above except that, rather than the requirement that a contract be signed and earnest money of 10 per cent of a contract be paid, the vessel owner must have commenced the construction or conversion activity before August 1, 1988. The "upgrade" period for vessels being constructed or converted begins with the conclusion of the construction or conversion. For vessels being constructed, this is the first landing of fish anywhere; for vessels being converted, this is the first landing of fish anywhere after the beginning of conversion.

A vessel owner who purchased a vessel during the window period, and used a limited entry gear to catch and land groundfish during the window period, but whose vessel does not meet the MLRs for an "A" gear endorsement, would qualify for a "provisional A" endorsement, provided ownership of the vessel was not transferred between August 1, 1988, and the time upgrade criteria are met. The 3-year "upgrade" period begins immediately upon the purchase of the vessel; the vessel owner must meet the upgrade landing requirements during each of 3 consecutive years or the permit will expire.

A "provisional A" endorsement may be upgraded to an endorsement if specific landing requirements are met during the first 3 years of an upgrade period. The amount of landings required each year is the approximate equivalent of the annualized MLR, which vessels receiving "A" endorsements are required to meet.

The landing requirements to upgrade a "provisional A" endorsement to an "A" endorsement are:

1. For trawl gear, at least 2 days with landings over 500 pounds a day of any groundfish species except Pacific

whiting; or a total of 113 mt of landings or deliveries (at sea) of any groundfish species except Pacific whiting; or 5 days or 938 mt of landings or deliveries (at sea) of Pacific whiting.

2. For longline gear, at least 2 days with landings over 500 pounds a day of any groundfish species; or a total of 10 mt of landings or deliveries of any groundfish species.

3. For trap (or pot) gear, at least 2 days with landings over 500 pounds a day of any groundfish species; or a total of 36 mt of landings or deliveries of any groundfish species.

As with all endorsements, any landing that includes salmon or shrimp will not count toward meeting the "upgrade" landing requirements.

A "provisional A" endorsement will expire at the end of any consecutive 365-day period (during the 3-year upgrade period) in which a vessel's landings or deliveries (at sea) do not meet the landing requirements for upgrade.

In addition to situations involving the purchase, construction, or conversion of a vessel, a "provisional A" endorsement could be upgraded to an "A" endorsement under two special circumstances: (1) Where endorsements are to be issued to vessel owners who used fishing gear that has been prohibited after the window period; and (2) where endorsements are to be issued for replacement vessels that are larger than the vessel replaced, when the vessel is "in place" prior to September 30, 1990.

For most vessels that would qualify for a "provisional A" endorsement, the upgrade period will have been completed by the time this proposed limited access program is implemented, if approved, and the vessel would be issued an "A" endorsement. Thus, any effort increase resulting from this provision is anticipated to be small and short-term.

"B" Endorsements

"B" endorsements are designed to allow those vessels with a history of participation in the fishery either prior to the window period or during the window period, but insufficient to meet the MLRs for an "A" endorsement, or for the upgrade of a "provisional A" endorsement to an "A" endorsement, to continue to participate for an adjustment period before they are required to obtain an "A" endorsement or to cease participating in the limited entry fishery. A vessel owner could receive a non-transferable "B" permit if his vessel landed at least 500 pounds of groundfish on at least 3 separate days at any time prior to August 1, 1988, the end of the window period, as long as the vessel owner has continuously owned the vessel since the date of the first of the three qualifying landings. The non-transferable "B" endorsement provides short-term access to the fishery to provide the opportunity for those individuals who may have participated at a higher level prior to the window period, or at a low level during the window period, to adjust to the limited entry program. "B" endorsements expire at the end of the 1996 fishing year, by which time vessel owners must have obtained a permit with an "A" endorsement or have left the limited entry fishery.

"Designated Species B" Endorsements

"Designated species B" endorsements may be issued for Pacific whiting, shortbelly rockfish, and jack mackerel (north of 39 degrees N. latitude), only if the committed harvesting capacity of vessels with limited entry permits is insufficient to harvest the allowable catch. "Designated species B" endorsements are valid through the end of the calendar year only and are not transferable with the permit. The purpose of these endorsements is to allow domestic fishermen the maximum opportunity to harvest these groundfish species prior to consideration of authorization of joint venture (JVP) or directed foreign fishing operations. The allowable harvest of each species by vessels with "designated species B" endorsements, the "designated species catch limit," is determined annually by NMFS on or about October 1 of the preceding fishing year and will be published in the **Federal Register**. "Designated species B" endorsements will be issued to allow achievement of the "designated species catch limit." Those vessels receiving "designated species B" endorsements will be determined by NMFS at the beginning of each fishing year based upon "seniority" (number of years the vessel has fished for the designated species). Vessels with equal seniority will be ranked equally. Endorsements will be issued first to all vessels with the highest seniority, then next highest, etc., until it is estimated that the commitments of applicants receiving endorsements is sufficient to take the "designated species catch limit." If there are insufficient commitments by senior applicants to take the catch limit, other applications will be ranked by lottery, and a number of endorsements sufficient to take the catch limit will be issued.

If NMFS initially overestimates the commitment of the limited entry fleet at the beginning of the year, it may reapportion quantities of fish to the "designated species catch limit" at any time during the year by publishing a notice in the **Federal Register**.

Other Provisions

Amendment 6 allows hardship exceptions for vessels that fail to meet the initial issuance and "prove-up" criteria, provided that the failure to qualify resulted from either (1) inadequate or incorrect official documentation (landing records) of landings or deliveries; (2) construction or conversion criteria are not met due to delay(s) beyond the control of the vessel owner; and (3) death, illness, or injury of a vessel owner, or litigation involving the vessel.

If a vessel that would have qualified for a permit is totally lost, it may be replaced within 2 years of the date of the loss, and the limited entry permit will be transferred to the new vessel. The size endorsement on the permit issued for the replacement vessel will be the overall length of the lost vessel, unless the vessel qualifies for a "provisional A" endorsement for the size of the replacement vessel.

Any person applying for a limited entry permit or gear endorsement may appeal in writing an initial decision regarding issuance to the Northwest Regional Director, NMFS, within 30 days of the initial decision. An appellant may, if desired, request that the Regional Director seek a recommendation from the Council as to whether the appeal should be granted.

The NMFS Regional Director will charge fees to cover administrative expenses related to issuance of limited entry permits including initial issuance, renewal, transfer, vessel registration, replacement, and appeals of limited entry permits. Although the amount of the initial issuance fee is as yet undetermined, it may run between $100 and $600 per vessel. A lesser fee may be charged for annual renewals and for transfers of permits.

Limited entry permits will be issued by the Fishery Management Division, Northwest Regional Office, National Marine Fisheries Service, 7600 Sand Point Way NE., Seattle, WA 98115, telephone (206) 526-6140. Applications for initial issuance of limited entry permits and gear endorsements would have to be submitted between January 1, 1993, and June 30, 1993. Initial limited entry permits will be issued between July 1, 1993, and December 31, 1993.

Scope of the Program

Under Amendment 6, a limited entry permit confers a privilege to operate the vessel in the commercial groundfish fishery, in conformance with the Pacific

Coast Groundfish FMP, using the gear(s) for which the permit is endorsed. The FMP could be revised in the future and could change or abolish the privileges associated with limited entry permits. One specific option currently under consideration by the Council is adoption of an Individual Transferable Quota (ITQ) system that would require ITQs to harvest specific groundfish species.

Classification

Section 304(a)(1)(D)(ii) of the Magnuson Act, as amended by Public Law 99–659, requires that the Secretary of Commerce (Secretary) publish proposed implementing regulations 15 days after the receipt of the amendment. At this time the Secretary has not determined that Amendment 6, which these proposed rules would implement, is consistent with the national standards, other provisions of the Magnuson Act, and other applicable law. The Secretary, in making that determination, will take into account the information, views and comments received during the comment period.

The Council prepared a supplemental Environmental Impact Statement (SEIS) for the amendment that discusses the impact on the environment as a result of this rule. A copy of the SEIS may be obtained from the Council (see **ADDRESSES**).

The Assistant Administrator for Fisheries, NOAA, initially has determined that this proposed rule is not a major rule requiring a regulatory impact analysis under Executive Order 12291. This determination is based on the RIR/IRFA that demonstrates prositive net short-term and long-term economic benefits to the fishery under the proposed management measures. The proposed rule is not expected to have an annual effect on the economy of $100 million or more; nor lead to significant increases in costs to consumers, industries, government agencies, or geographical regions; nor to have significant adverse impacts on competition, employment, investments, productivity, innovation, or competitiveness of U.S.-based enterprises. A copy of this review may be obtained from the Council (see **ADDRESSES**).

The proposed rule is exempt from the advance review procedures of E.O. 12291 under section 8(a)(2) of that order. The Magnuson Act, as amended, requires the Secretary to publish proposed implementing regulations 15 days after receipt of the amendment. The proposed rule is being reported to the Director, Office of Management and Budget, with an explanation of why it is not possible to follow the procedures of the order.

The major burden imposed on small business by license limitation is the cost of acquiring permits incurred by those who do not initially receive them. NMFS believes this proposed regulatory action, if adopted, could have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, depending upon the future market prices for limited entry permits. That market does not presently exist and, therefore, we do not know what the demand will be. There could be a significant effect on vessels that do not qualify for limited entry permits depending on the price for permits. We do not know how many recent participants there are in this fishery and who will not qualify for initial limited entry permits. For small entities who cannot afford to purchase a limited entry permit, this proposed regulatory action will significantly impact them. For other small entities, the potentially significant economic impact due to the cost of the permit is somewhat offset by the realization of anticipated above-normal earnings to participants in the limited entry fishery. Most vessel owners who fished during the window period but do not initially qualify for a permit relied on groundfish caught with limited entry gear for only a small portion of their revenue during the window period. All small entities participating in the limited entry fishery will be impacted by the requirement for permit holders to pay an annual permit fee to NMFS to cover costs of processing and issuing permits, administering the permit program and its data files, and financing a Permit Review Board. This fee is expected to be considerably less than $500 regardless of the size of the entity. The RIR/IRFA examines impacts on small entities and may be obtained from the Council (see **ADDRESSES**).

This proposed rule contains several new collection-of-information requirements subject to the Paperwork Reduction Act. Requests to collect this information are being submitted to the Office of Management and Budget (OMB) for approval. The requirements are for application forms: (1) To apply for the issuance of initial permits; (2) to apply to transfer ownership of a permit; (3) to apply to transfer the permit to a different vessel; and (4) to apply for annual renewal of the permit. The public reporting burden for this collection is estimated to average 1 hour per response for initial application for a permit, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Renewal of permits is estimated to average 0.3 hours and permit transfers 0.2 hours. Send comments on these reporting burden estimates or any other aspect of the collection of information, including suggestions for reducing the burdens, to NMFS and OMB (see **ADDRESSES**).

NMFS issued a Biological Opinion under the Endangered Species Act on August 10, 1990, pertaining to Amendment 4 of the FMP. It concluded that implementation of the FMP (including Amendment 4) would not jeopardize the continued existence of any of the species considered. NMFS listed Snake River sockeye salmon as endangered on November 20, 1991, and Snake River spring/summer and fall chinook as threatened on April 22, 1992. As a result, NMFS has reinitiated consultation under section 7 of the Endangered Species Act and a Biological Opinion addressing the effects of the groundfish fishery (as managed under Amendment 6) on these species will be completed before this proposed rule becomes final.

The Council has determined that this rule is consistent to the maximum extent practicable with the approved coastal zone management programs of the States of Washington, Oregon, and California. Letters have been sent to the three states requesting their review and comment.

This proposed rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

List of Subjects in 50 CFR Part 663

Administrative practice and procedures, Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: July 16, 1992.

Samual W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 663 is proposed to be amended as follows:

1. The authority citation for part 663 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 663.7, new paragraphs (q) through (u) are added to read as follows:

§ 663.7 Prohibitions.

* * * * *

(q) Effective January 1, 1994, fish with trawl gear, or carry trawl gear on board a vessel that also has groundfish aboard

(unless the vessel is in continuous transit from outside the fishery management area to a port in Washington, Oregon, or California), without having a limited entry permit valid for that vessel affixed with a gear endorsement for trawl gear.

(r) Effective January 1, 1994, fail to carry aboard a vessel that vessel's limited entry permit.

(s) Makes a false statement on an application for issuance, renewal, transfer, vessel registration, or replacement of a limited entry permit.

(t) Effective January 1, 1994, take and retain, possess, or land groundfish in excess of the landing limit for the open access fishery without having a valid limited entry permit for the vessel affixed with a gear endorsement for the gear used to catch the fish.

(u) Effective January 1, 1994, carry on board a vessel, or deploy, limited entry gear when the limited entry fishery for that gear is closed.

3. A new subpart C is added to 50 CFR part 663 to read as follows:

Subpart C—Limited Entry and Open Access Fisheries

Sec.

Subpart C—Limited Entry and Open Access Fisheries

§ 663.30 General.

(a) This subpart applies to non-treaty Indian commercial fishing for groundfish in the Pacific Coast Groundfish Fishery, and provides procedures and criteria for the administration of the limited entry and open access fisheries established by Amendment 6.

(b) Effective January 1, 1994, all commercial fishing for groundfish must be conducted in accordance with this subpart, except such fishing by treaty Indian tribes as may be separately provided for.

§ 663.31 Definitions.

In addition to the definitions in the Magnuson Act and in §§ 620.2 and 663.2 of this chapter, the terms used in this subpart have the following meanings:

Amendment 6 means Amendment 6 to the Pacific Coast Groundfish Plan.

Exempted gear means all types of fishing gear except trawl, longline, and trap (or pot) gear.

Fisheries Management Division (FMD) means the Chief, Fisheries Management Division, Northwest Regional Office, National Marine Fisheries Service, 7600 Sand Point Way NE., Seattle, WA 98115, telephone (206) 526–6140, or a designee.

Length overall, with respect to a vessel, means the length overall set forth in the Certificate of Documentation (CG–1270) issued by the U.S. Coast Guard for a documented vessel, or in a registration certificate issued by a state or the U.S. Coast Guard for an undocumented vessel; for vessels which do not have the length overall stated in an official document, the length overall is the length overall as determined by the U.S. Coast Guard or by a marine surveyor in accordance with the U.S. Coast Guard method for measuring length overall.

Limited entry fishery means the fishery composed of vessels using trawl gear, longline, and trap (or pot) gear fished pursuant to the harvest guidelines, quotas, and other management measures governing the limited entry fishery.

Limited entry gear means longline or trap (or pot) gear used under the authority of a valid limited entry permit affixed with an endorsement for that gear, and all trawl gear.

Limited entry permit means the permit required to participate in the limited entry fishery, and includes the gear endorsements affixed to the permit unless specified otherwise.

Longline, for purposes of this subpart only, means a stationary, buoyed, and anchored groundline with hooks attached, but does not include commercial vertical hook-and-line gear.

Mt means metric ton.

Open access fishery means the fishery composed of vessels using trawl gear, longline, and trap (or pot) gear fished pursuant to the harvest guidelines, quotas, and other management measures governing the open access fishery.

Open access gear means all types of fishing gear except:

(1) Longline or trap (or pot) gear fished by a vessel that has a limited entry permit affixed with a gear endorsement for that gear; and

(2) Trawl gear.

Owner, as used in this subpart, means a person who is identified as the current owner in the Certificate of Documentation (CG–1270) issued by the U.S. Coast Guard for a documented vessel, or in a registration certificate issued by a state or the U.S. Coast Guard for an undocumented vessel.

Person, as used in this subpart, means any individual, corporation, partnership, association or other entity (whether or not organized or existing under the laws of any state), and any Federal, state, or local government, or any entity of any such government that is eligible to own a documented vessel under the terms of 46 U.S.C. 12102(a).

Regional Director means the Northwest Regional Director, National Marine Fisheries Service, 7600 Sand Point Way NE., Seattle, WA 98115, telephone (206) 526–6150.

Totally lost means that the vessel being replaced no longer exists *in specie*, or is absolutely and irretrievably sunk or otherwise beyond the possible control of the owner, or the costs of repair (including recovery) would exceed the repaired value of the vessel.

Window period means the period from July 11, 1984, through August 1, 1988.

§ 663.32 Allocations.

(a) *General.* Effective January 1, 1994, the commercial portion of the Pacific Coast Groundfish Fishery, excluding the treaty-Indian fishery, is divided into limited entry and open access fisheries.

(b) *Allocation procedures.* Effective January 1, 1994, separate allocations for the limited entry and open access fisheries will be established annually for certain species and/or areas using the procedures described in § 663.21 and sections II.E. and H. of the appendix to this part.

(c) *Catch accounting between the limited entry and open access fisheries.* Any groundfish caught by a vessel with a limited entry permit will be counted against the limited entry allocation while the limited entry fishery for that vessel's limited entry gear is open. When the fishery for a vessel's limited entry gear has closed, groundfish caught by that vessel with open access gear will be counted against the open access allocation. All groundfish caught by vessels without limited entry permits will be counted against the open access allocation.

(d) *Additional guidelines.* Additional guidelines governing determination of the limited entry and open access allocations are in section II.E.(d) of the appendix to this part.

(e) *Treaty Indian fisheries.* Certain amounts of groundfish may be set aside annually for tribal fisheries prior to dividing the balance of the allowable catch between the limited entry and open access fisheries. Tribal fisheries

conducted under a set-aside are not subject to this subpart.

(f) *Recreational fisheries.* Recreational fishing for groundfish is outside the scope of, and not affected by, this subpart. Certain amounts of groundfish may be specifically allocated to the recreational fishery, and will be set aside prior to dividing the commercial allocation between the commercial limited entry and open access fisheries.

§ 663.33 Limited entry fishery—General.

(a) Participation in the limited entry fishery requires that the owner of a vessel have a limited entry permit affixed with a gear endorsement registered for use with that vessel for the gear being fished. There are four types of gear endorsements: "A," "provisional A," "B," and "designated species B." More than one type of gear endorsement may be affixed to a limited entry permit. While the limited entry fishery is open, vessels fishing under limited entry permits may also fish with open access gear. All fishing with open access gear is subject to regulations applicable to the open access fishery. Vessels with limited entry permits may also participate in the open access fishery when the limited entry fishery is closed, but only with open access gear.

(b) At initial issuance, no more than one limited entry permit will be issued for each qualifying vessel. The limited entry permit will be issued only to the current owner of the vessel, unless:

(1) The previous owner of a vessel qualifying for an "A" or a "designated species B" gear endorsement has, by the express terms of a written contract, reserved the right (or, for "designated species B" endorsements, seniority status) to the limited entry permit, in which case the limited entry permit will be issued to the previous owner based on the catch history of the qualifying vessel [note: If the limited entry rights have been reserved by contract, the current vessel owner no longer has rights to the issuance of a limited entry permit for the qualifying vessel]; or

(2) A vessel that would have qualified for an "A" gear endorsement was totally lost prior to initial issuance of a limited entry permit. In this case, the owner of the vessel at the time it was lost retains the right to a limited entry permit with an "A" gear endorsement, unless the owner conveyed the right to another person by the express terms of a written contract, in which case the person holding the contractual rights is entitled to the permit (see § 663.39).

(c) A vessel qualified for initial issuance of a limited entry permit by meeting the initial issuance criteria for one or more gear endorsements (reference §§ 663.34, 663.35, 663.36, and 663.37).

(d) Limited entry permits are transferable as follows:

(1) The permit holder may transfer (by sale, assignment, lease, bequest, intestate succession, barter, trade, gift, or other form of conveyance) the limited entry permit to a different person, or to a different vessel under the same ownership, subject to the conditions set forth in this subpart.

(2) Gear endorsements may not be transferred separately from the limited entry permit.

(3) Except as provided in §§ 663.35(b)(2), 663.36(b)(2), and 663.37(b)(2), only "A" gear endorsements remain valid with the transfer of a limited entry permit.

(e) Only a person eligible to own a documented vessel under the terms of 46 U.S.C. 12102(a) may be issued or may hold (by ownership or otherwise) a limited entry permit.

(f) *Vessel size endorsements.* (1) The limited entry permit will be endorsed with the length overall for the vessel for which the permit is initially issued, except as provided in § 663.35(a)(4) regarding issuance of a "provisional A" endorsement for the size of the replacement vessel.

(2) A permit may be used with a vessel up to 5 feet (1.52 m) more in length overall than the length endorsed on the permit without a change in the size endorsement.

(3) The length for which the permit is endorsed will be changed only when permits are combined for use with a vessel requiring a larger size endorsement (reference paragraph (g) of this section), or, for permits endorsed for trawl gear, when the length of the vessel used under the permit is more than 5 feet (1.52 m) less than the originally endorsed length, in which case the permit will be reissued with a length overall endorsement for the length of the smaller vessel.

(g) *Combining limited entry permits.* Two or more limited entry permits with "A" gear endorsements for the same type of limited entry gear may be combined to "step-up" to a permit with a larger size endorsement. The Regional Director, with professional advice of marine architects and other qualified individuals, and after consultation with the Council, will develop and implement a standardized measure of harvest capacity for the purpose of determining the appropriate endorsed lengths for limited entry permits created by combining two or more permits with smaller size endorsements. The harvest capacity represented by the larger size endorsement should not exceed the sum of the harvest capacities of the limited entry permits being combined.

(h) *Limited entry permits indivisible.* Limited entry permits may not be divided for use by more than one vessel.

§ 663.34 "A" gear endorsement.

(a) *Initial issuance criteria.* (1) The current owner of a vessel that met the minimum landing requirements (MLRs) during the window period may receive an "A" endorsement for each type of limited entry gear for which the vessel qualifies.

(2) The MLRs are:

(i) Use of trawl gear to make: At least 9 separate days with landings over 500 pounds (227 kg) of any groundfish species except Pacific whiting; or 450 mt of landings of any groundfish species except Pacific whiting; or 17 separate days with landings over 500 pounds (227 kg) of Pacific whiting; or 3,750 mt of landings of Pacific whiting.

(ii) Use of longline gear to make: At least 6 separate days with landings over 500 pounds (227 kg) of any groundfish species; or 37.5 mt of landings of any groundfish species.

(iii) Use of trap (or pot) gear to make: At least 5 separate days with landings over 500 pounds (227 kg) of any groundfish species; or 150 mt of landings of any groundfish species.

(iv) *Exceptions:* Any landing that included salmon or shrimp will not count toward meeting the MLRs.

(3) *Small limited entry fleets.* (i) Small limited entry fisheries that are controlled by a local government, are in existence as of July 11, 1991, and that have negligible impacts on the groundfish resource, may be certified as consistent with the goals and objectives of Amendment 6 and incorporated into the limited entry fishery.

(ii) If a fleet is certified and incorporated into the limited entry fishery, vessels in the fleet at the time of incorporation will be issued limited entry permits with "A" endorsements for appropriate gear.

(iii) A permit issued to a vessel in a certified fleet is only valid when the vessel is operating under and in conformance with the certified program. Such a permit and endorsement may be transferred to another vessel that will operate in the same certified fleet, provided the total number of vessels in the fleet does not increase. If more vessels are added to a fleet in a certified limited entry program, these additional vessels will not receive "A" endorsements unless the program is recertified for the greater number of

vessels, and the larger fleet incorporated into the limited entry fishery.

(iv) The Regional Director may place an upper limit on the amount of groundfish that an incorporated fleet, or vessels operating in an incorporated fleet, may land.

(v) *Procedure for incorporation.* Upon application of a representative of a small limited entry fleet, the Regional Director, after receiving a recommendation from the Council, may incorporate the fleet into the limited entry fishery, if the Regional Director:

(A) Determines that the fleet has a negligible impact on the groundfish resource; and

(B) Certifies the activities of the fleet as consistent with the goals and objectives of Amendment 6.

(4) *Other qualifying criteria for "A" gear endorsements.* See §§ 663.35(a)(4) and 663.35(c).

(b) *Attributes.* (1) A limited entry permit with an "A" endorsement entitles the holder to participate in the limited entry fishery for all groundfish species with the type(s) of limited entry gear specified in the endorsement.

(2) An "A" endorsement is transferable with the limited entry permit to another person, or to another person or a different vessel under the same ownership under § 663.41(d).

(3) An "A" endorsement expires on failure to renew the limited entry permit to which it is affixed (see § 663.41(c)).

§ 663.35 "Provisional A" gear endorsement.

(a) *Initial issuance criteria.* The following persons qualify for "provisional A" gear endorsements:

(1) A person who contracted to have a vessel constructed or converted may qualify for a "provisional A" endorsement for the vessel if:

(i) A contract for part of the construction (including laying of the keel) or conversion was signed, and earnest money of 10 percent or more of the value of the contract was paid, prior to August 1, 1988;

(ii) The contract for the vessel under construction (or ownership of vessel under conversion) is not transferred from the contract holder (or owner) between August 1, 1988, and the issuance of the "provisional A" endorsement (unless the transfer was caused by the death of the vessel owner, in which case the transferee may apply for the "provisional A" endorsement);

(iii) For vessels qualifying under the construction provision, no landing of any species of fish was made anywhere by the vessel prior to July 11, 1984; for vessels qualifying under the conversion provision, no landing of any species of fish was made anywhere between the time conversion began and July 11, 1984; and

(iv) For vessels qualifying under the construction provision, at least one landing of any species of fish was made anywhere prior to September 30, 1990; for vessels qualifying under the conversion provision, at least one landing of any species of fish was made after conversion began and prior to September 30, 1990.

(2) A vessel owner who constructed or converted a vessel may qualify for a "provisional A" endorsement for the vessel if:

(i) Prior to August 1, 1988, the keel was laid or conversion began;

(ii) Vessel ownership is not transferred from the owner between August 1, 1988, and issuance of the "provisional A" endorsement (unless the transfer was caused by the death of the vessel owner, in which case the transferee may apply for the "provisional A" endorsement);

(iii) For vessels qualifying under the construction provision, no landing of any species of fish was made anywhere by the vessel prior to July 11, 1984; for vessels qualifying under the conversion provision, no landing of any species of fish was made anywhere between the time conversion began and July 11, 1984; and

(iv) For vessels qualifying under the construction provision, at least one landing of any species of fish was made anywhere prior to September 30, 1990; for vessels qualifying under the conversion provision, at least one landing of any species of fish was made after conversion began and prior to September 30, 1990.

(3) A vessel owner who purchased the vessel during the window period, and used a limited entry gear to catch and land groundfish during the window period, but whose vessel does not meet the MLRs for an "A" gear endorsement, may qualify for a "provisional A" endorsement for the limited entry gear(s) used during the window period, provided ownership of the vessel is not transferred between August 1, 1988, and the issuance of the "provisional A" endorsement (unless the transfer was caused by the death of the vessel owner, in which case the transferee may apply for the "provisional A" endorsement).

(4) Persons owning replacement vessels qualify by the following:

(i) An owner of a replacement vessel more than 5 feet (1.52 m) longer than the replaced vessel may be issued a "provisional A" endorsement for the length of the replacement vessel if, prior to September 30, 1990, the owner has:

(A) Acquired a replacement vessel;

(B) Disposed of the replaced vessel; and

(C) Reserved, by the express terms of a written contract, the right to a future limited entry permit on the basis of the catch history of the replaced vessel.

(ii) If the limited entry rights have been reserved by contract, the replaced vessel entitles no subsequent owner to issuance of a limited entry permit for that vessel. The owner of a replacement vessel must choose between:

(A) An "A" endorsement on a limited entry permit with the size endorsement applicable to the replaced vessel; or

(B) A "provisional A" endorsement on a limited entry permit with a size endorsement for the replacement vessel.

(iii) The "provisional A" endorsement will be issued only for the gear(s) for which the replaced vessel would have qualified for an "A" endorsement. For purposes of this paragraph (a)(4), "replacement vessel" means a vessel that replaces, through construction, conversion, purchase or trade, a vessel that would qualify for an "A" gear endorsement.

(5) If, after the window period, an exempt gear is prohibited by Washington, Oregon, or California or the Secretary of Commerce, the owners of vessels using such gear, who would not otherwise qualify for an "A" or "provisional A" endorsement, may qualify for a "provisional A" endorsement for only one of the three limited entry gears, if the vessel used the prohibited gear to make sufficient landings of groundfish during the window period to meet the MLR for the limited entry gear. If a vessel would qualify for an endorsement for more than one limited entry gear, the owner must choose the type of gear for which the endorsement will be issued. If an "A" or "provisional A" endorsement was previously issued for the vessel, and the endorsement was subsequently transferred or expired, no "provisional A" endorsement will be issued.

(b) *Attributes.* (1) A limited entry with a "provisional A" endorsement entitles the holder to fish for all groundfish species with the type(s) of limited entry gear specified in the endorsement.

(2) A "provisional A" endorsement is not transferable with the limited entry permit to another person, and may not be used with a different vessel under the same ownership, unless:

(i) The vessel for which the endorsement was issued is totally lost, and the permit is transferred to a replacement vessel by the permit holder (see § 663.39); or

(ii) The transfer is caused by the death of the vessel owner, in which case the

transferee may hold the "provisional A" endorsement.

(3) A "provisional A" endorsement will be issued for only one type of limited entry gear, to be selected by the vessel owner, for vessels qualifying under the construction or conversion, and "prohibited gear" provisions. "Provisional A" endorsements for more than one type of limited entry gear may be issued for vessels qualifying under the purchase and replacement provisions.

(4) The maximum (but not minimum) duration of a "provisional A" endorsement is 3 years (see paragraph (e) of this section).

(5) A "provisional A" endorsement will not be issued to a vessel that has already failed to meet the upgrade criteria for an "A" endorsement (see paragraph (c) of this section) at the time application for the "provisional A" endorsement is made. A vessel that has met the upgrade criteria for an "A" endorsement at the time application for a limited entry permit is made will be issued an "A" endorsement. A vessel will be considered qualified for an "A" endorsement as of the date the "provisional A" endorsement upgrade criteria are met.

(c) *Upgrading.* (1) A "provisional A" endorsement may be upgraded to an "A" endorsement.

(2) For a "provisional A" endorsement to be upgraded, the vessel must meet one of the landing requirements in paragraph (c)(3) of this section in each of the three consecutive 365-day periods beginning with the earliest date of: Endorsement issuance; for vessels qualifying under the construction provision, first landing of any species of fish by the vessel anywhere; for vessels qualifying under the conversion provision, first landing of any species of fish by the vessel anywhere after the date conversion began; vessel purchase for vessels qualifying under purchase provisions; or vessel replacement for vessels qualifying under replacement provisions.

(3) The landing requirements to upgrade a "provisional A" endorsement to an "A" endorsement are as follows:

(i) Use of trawl gear to make: At least 2 separate days with landings over 500 pounds (227 kg) of any groundfish species; or 113 mt of landings of any groundfish species except Pacific whiting; or 5 days or 938 mt of landings of Pacific whiting.

(ii) Use of longline gear to make: At least 2 separate days with landings over 500 pounds (227 kg) of any groundfish species; or 10 mt of landings of any groundfish species.

(iii) Use of trap (or pot) gear to make: At least 2 separate days with landings over 500 pounds (227 kg) of any groundfish species; or 36 mt of landings of any groundfish species.

(iv) *Exceptions*: Any landing that included salmon or shrimp will not count toward meeting the landing requirements.

(d) *Conversion*: "Conversion", for purposes of determining a vessel's "provisional A" gear endorsement eligibility, means that:

(1) Prior to the conversion, the vessel was structurally incapable of fishing for groundfish with the limited entry gear selected for the "provisional A" endorsement;

(2) The conversion included a structural change to the vessel which enabled it to fish for groundfish with the selected gear (for longline and trap (or pot) vessels, the structural change may include installation of a gear hauler); and

(3) The amount invested in conversion (including all equipment and gear) was more than 25 percent of the current appraised value of the converted vessel, or $10,000, whichever is less, of which not more than one-fifth of the investment was for fishing gear. For purposes of this paragraph, "gear" means fishing gear not permanently affixed to the vessel (not welded or bolted), and, with respect to electronic equipment, includes only equipment specifically required for use of the gear in the groundfish fishery.

(e) *Expiration.* (1) A "provisional A" endorsement expires at the end of any 365-day period (during the 3-year qualifying period) in which a vessel's landings do not meet the applicable landing requirement.

(2) A "provisional A" endorsement expires on failure to renew the limited entry permit (see § 663.41).

(3) A "provisional A" endorsement that expires will not be reissued.

§ 663.36 "B" gear endorsement.

(a) *Intial issuance criteria.* (1) The current owner of a vessel that did not meet the MLRs for an "A" endorsement may receive a "B" endorsement for each type of limited entry gear used by the vessel to land at least 500 pounds (227 kg) of groundfish on at least 3 separate days at any time prior to August 1, 1988, if the owner has continuously owned the vessel since the date of the first of the three qualifying landings.

(2) For purposes of the "continuous ownership" requirement for initial issuance of "B" endorsements only, vessel ownership will not be considered to change, even if there is a change in the ownership shown on the vessel documentation, so long as there is no change in the controlling interest in the vessel. *Controlling interest* means, in the case of a corporation, ownership of stock possessing at least 51 percent of total combined voting power of all classes of stock entitled to vote of such corporation, or at least 51 percent of the total value of shares of all classes of stock of such corporations; in the case of a trust or estate, ownership of an actuarial interest of at least 51 percent of such trust or estate; in the case of a partnership, ownership of at least 51 percent of the profits interest or capital interest of such partnership; and, in the case of a sole proprietorship, ownership of such sole proprietorship.

(3) Any landing that included salmon or shrimp will not count toward meeting the landing requirements.

(4) A vessel owner who has failed to meet the landing requirements for upgrading a "provisional A" endorsement to an "A" endorsement, but who meets the landing and ownership requirements in paragraph (a)(1) of this section, may be issued a "B" endorsement, provided that the "provisional A" endorsement was not issued under § 663.35(a)(4) (replacement of smaller vessels).

(b) *Attributes.* (1) A limited entry permit with a "B" endorsement entitles the holder to fish for all groundfish species with the type(s) of limited entry gear specified in the endorsement.

(2) A "B" endorsement is not transferable to another person, and may not be used with another vessel under the same ownership, unless the vessel for which the endorsement was issued is totally lost, and the permit is transferred to a replacement vessel owned by the same owner (see § 663.39).

(c) *Expiration.* (1) All "B" endorsements expire on December 31, 1996.

(2) A "B" endorsement expires on failure to renew the limited entry permit (see § 663.41(c)).

§ 663.37 "Designated Species B" gear endorsement.

(a) *Issuance criteria*—(1) *General. Designated species* means Pacific whiting, jack mackerel north of 39° North latitude, and shortbelly rockfish. By-catch allowances in fisheries for these species will be established using the procedures specified for incidental allowances in joint venture and foreign fisheries at 50 CFR part 663, Appendix II.J.

(2) *Catch limit.* On or about October 1 of each year, the FMD will determine the commitment of persons with limited entry permits with "A," "provisional A,"

and "B" gear endorsements (the "limited entry fleet") to harvest each designated species for delivery to domestic processors during the coming year. "Commitment" means a permit holder's contract or agreement with a specific domestic processor to deliver an estimated amount of the designated species. The "designated species B" endorsement catch limit is the harvest guideline or quota for the designated species minus the commitment of the limited entry fleet. If the commitment is less than DAP and the harvest guideline or quota for the species, "designated species B" endorsements valid for delivery to domestic processors will be issued in numbers necessary to reach but not exceed the harvest guideline or quota. "Designated species B" endorsements also may be issued for delivery to foreign processors of designated species for which a JVP is established. If at any time during the fishing year the FMD determines that any part of the limited entry fleet commitment will not be taken, the Regional Director will make a reapportionment to the "designated species B" endorsement catch limit. The amount of the annual limited entry fleet commitment, "designated species B" endorsement catch limit, and the amounts and timing of any reapportionments to the "designated species B" endorsement catch limit will be announced in the **Federal Register.**

(3) *Procedure for issuance.* Owners of vessels applying for "designated species B" endorsements must apply on or before November 1 of each year for a "designated species B" endorsement for the following year. Applicants are required to specify their commitments for delivery of the designated species for the coming year. On or about November 1 of each year, the FMD will establish a prioritized list of applicants based on seniority (number of years the vessel has fished for the designated species). Vessels with equal seniority will be ranked equally. "Designated species B" endorsements will be issued first to all vessels with the highest seniority, then to those with the next highest seniority, and so on down the list. No further endorsements will be issued when it is estimated that the commitments of applicants receiving endorsements is sufficient to take the "designated species B" catch limit. If there are insufficient commitments by senior applicants to take the "designated species B" catch limit, additional applications will be ranked by lottery and a number of endorsements sufficient to take the catch limit will be issued.

(b) *Attributes.* (1) A limited entry permit with a "designated species B" endorsement entitles the holder to fish only for the species, and only with the gear, specified in the endorsement.

(2) A "designated species B" endorsement is not transferable to another person, and may not be used with a different vessel under the same ownership, unless the vessel has been totally lost and replaced consistent with the provisions of § 663.39, in which case the replacement vessel has the same seniority as the lost vessel for purposes of a "designated species B" endorsement.

(3) A "designated species B" endorsement is valid only for the fishing year for which it is issued.

§ 663.38 Hardship exceptions.

Hardship exceptions to initial issuance and upgrade criteria exist for limited entry permits with "A," "provisional A," and "B" gear endorsements. Under the permit issuance process of § 663.41, a hardship exception may be granted to a permit applicant for a vessel that does not meet the initial issuance or upgrade criteria for a gear endorsement. No hardship exceptions will be granted for vessels that did not meet the MLRs or landing requirements during the window period for economic reasons, or because of loss or inactivity of the vessel as a result of a violation of Federal or state law (including non-fisheries violations). If a hardship exception is granted, a limited entry permit will be issued with gear endorsement(s) for which the applicant's vessel would have qualified if the hardship had not intervened. In order to obtain a hardship exception, the applicant must prove that the vessel's failure to qualify was caused by one of the following hardship situations:

(a) Insufficient documented landings with legal groundfish gear during the applicable period due to inadequate or incorrect official documentation of landings. In this situation, evidence other than official landing records may be considered.

(b) Construction or conversion criteria are not met due to delay(s) beyond the control of the vessel owner.

(c) Death, illness, or injury of a vessel owner, or litigation involving the vessel, prevented the vessel from meeting the MLRs, landing requirements, construction, conversion, replacement, or upgrade criteria during the applicable qualifying period.

§ 663.39 Replacement of lost vessels.

(a) If a vessel that has a "provisional A," "B," or "designated species B" gear endorsement, or, prior to limited entry permit issuance, would qualify for an "A," "provisional A," "B," or "designated species B" gear endorsement, is totally lost it may be replaced within 2 years of the date of the loss, and its rights (in the case of "designated species B" gear endorsements, seniority status) to a limited entry permit transferred to a replacement vessel, unless the loss was the result of the willful act of the vessel owner or someone acting on the owner's behalf. The 2-year period allowed for replacement may be extended if circumstances beyond the control of the person holding the replacement rights prevented acquisition of a replacement vessel within 2 years of the loss.

(b) Rights may only be transferred to a replacement vessel owned by the same owner as the lost vessel, except for vessels with "A" endorsements and vessels qualifying for "A" endorsements that were lost before a limited entry permit was issued. (See § 663.33(b)(2)).

(c) The size endorsement on the limited entry permit issued for the replacement vessel shall be the length overall of the lost vessel, except that a "provisional A" endorsement may be issued for the size of the replacement vessel under § 663.35(a)(4).

§ 663.40 Fees.

The Regional Director will charge fees to cover administrative expenses related to issuance of limited entry permits, including initial issuance, renewal, transfer, vessel registration, replacement, and appeals. The amount of the fee is calculated in accordance with the procedures of the NOAA Finance Handbook for determining the administrative costs of each special product or service. The fee may not exceed such costs and is specified with each application form. The appropriate fee must accompany each application.

§ 663.41 Limited entry permits.

(a) *Initial issuance—issuing authority; schedule.* (1) Limited entry permits will be issued by the FMD.

(2) Applications for initial issuance of limited entry permits and gear endorsements must be submitted between January 1, 1993, and June 30, 1993. Initial limited entry permits will be issued between July 1, 1993, and December 31, 1993. Exceptions to this schedule are as follows:

(i) An owner of a vessel qualifying for a "provisional A" gear endorsement because the vessel's gear has been prohibited must take application within 180 days of the date the prohibition is effective, or between January 1, 1993, and June 30, 1993, whichever is later.

(ii) An owner of a vessel applying for a "B" gear endorsement because the vessel has failed to meet the "provisional A" upgrade criteria after January 1, 1993, must make application within 180 days of failure to meet the upgrade criteria.

(iii) Owners of vessels applying for "designated species B" endorsements must apply on or before November 1 of each year for a "designated species B" endorsement for the following fishing year.

(iv) Owners of vessels that are part of a limited entry fleet incorporated under § 663.34(a)(3) must apply within 180 days of incorporation.

(3) Untimely applications will be rejected unless the applicant demonstrates that circumstances beyond the applicant's control prevented submission of the application during the specified period. Illness, injury, or death of the potential applicant are the primary grounds on which untimely applications may be accepted.

(b) *Applications for limited entry permits and gear endorsements.* (1) Application forms for limited entry permits and gear endorsements are available from the FMD. Contents of the application, and required supporting documentation, are specified in the application form.

(2) A separate, fully complete, and accurate application form, together with required supporting documentation, must be submitted for each vessel for which a limited entry permit is sought.

(3) Upon receipt of an incomplete or improperly executed application, the FMD will notify the applicant of the deficiency. If the applicant fails to correct the deficiency within 30 days following the date of notification, the application will be considered abandoned.

(4) If the application is complete on its face, the FMD may request further documentation as necessary to act on the request.

(c) *Renewal of limited entry permits and gear endorsements.* (1) Limited entry permits expire at the end of each calendar year, and must be renewed between September 1 and October 31 of each year in order to remain in force the following year.

(2) Notices to renew limited entry permits will be issued by FMD prior to September 1 each year to the most recent address of the permit holder. The permit holder shall provide FMD with notice of any address change within 15 days of the change.

(3) A limited entry permit that is allowed to expire will not be renewed unless the FMD determines that failure to renew was proximately caused by the illness, injury, or death of the permit holder.

(d) *Transfer and registration of limited entry permits and gear endorsements.* (1) Upon transfer of a limited entry permit, the FMD will reissue the permit in the name of the new permit holder with such gear endorsements as are eligible for transfer with the permit. No transfer is effective until the limited entry permit has been reissued and is in the possession of the new permit holder.

(2) A limited entry permit may not be used with a vessel unless it is registered for use with that vessel. Limited entry permits will normally be registered for use with a particular vessel at the time the permit is issued, renewed, transferred, or replaced. A permit not registered for use with a particular vessel may not be used. If the permit will be used with a vessel other than the one registered on the permit, a registration for use with the new vessel must be obtained from the FMD and placed aboard the vessel before it is used under the permit.

(3) Application forms for the transfer and registration of limited entry permits are available from the FMD. Contents of the application, and required supporting documentation, are specified in the application form.

(4) the FMD will maintain records of all limited entry permits that have been issued, renewed, transferred, registered, or replaced.

(e) *Evidence and burden of proof.* A vessel owner (or person holding limited entry rights under the express terms of a written contract) applying for issuance, renewal, transfer, or registration of a limited entry permit has the burden to submit evidence to prove that qualification requirements are met. The following evidentiary standards apply:

(1) A certified copy of the current vessel document (U.S. Coast Guard or state) is the best evidence of vessel ownership and length overall;

(2) A certified copy of a state fish receiving ticket is the best evidence of a landing, and of the type of gear used;

(3) A copy of a written contract reserving or conveying limited entry rights is the best evidence of reserved or acquired rights; and

(4) Such other relevant, credible evidence as the applicant may submit, or the FMD or the Regional Director request or acquire, may also be considered.

(f) *Initial decisions.* Initial decisions regarding issuance, renewal, transfer, and registration of limited entry permits, and endorsement upgrade, will be made by the FMD. Adverse decisions shall be in writing and shall state the reasons therefor. The FMD may decline to transfer if sanctions on the permit are pending (see § 663.43).

§ 663.42 Permit appeals.

(a) Decisions on appeal of initial decisions regarding issuance, renewal, transfer, and registration of limited entry permits, and endorsement upgrade, will be made by the Regional Director.

(b) Appeal decisions shall be in writing and shall state the reasons therefor.

(c) Within 30 days of an initial decision by the FMD denying issuance, renewal, transfer, or registration of a limited entry permit, or endorsement upgrade, on the terms requested by the applicant, an appeal may be filed with the Regional Director.

(d) The appeal must be in writing, and must allege facts or circumstances to show why the criteria in this subpart have been met, or why a hardship exception should be granted.

(e) In the appellant's discretion, the appeal may be accompanied by a request that the Regional Director seek a recommendation from the Council as to whether the appeal should be granted. Such a request must contain the appellant's acknowledgement that the confidentiality provision so the Magnuson Act at 16 U.S.C. 1853(d) and 50 CFR part 603 are waived with respect to any information supplied by the Regional Director to the Council and its advisory bodies for purposes of receiving the Council's recommendation on the appeal. In responding to a request for a recommendation on appeal, the Council will apply the provisions of this subpart in making its recommendation as to whether the appeal should be granted.

(f) Absent good cause for further delay, the regional Director will issue a written decision on the appeal within 45 days of receipt of the appeal, or, if a recommendation from the Council is requested, within 45 days of receiving the Council's recommendation. The Regional Director's decision is the final administrative decision of the Department of Commerce as of the date of the decision.

§ 663.43 Permit sanctions.

Limited entry permits are subject to sanctions pursuant to the Magnuson Act at 16 U.S.C. 1858(g) and 15 CFR part 904, subpart D. The FMD shall review every application to transfer limited entry permits. If the FMD determines that the applicant has been issued a Notice of Permit Sanction for a violation of the Magnuson Act that has not been

resolved, the FMD may decline to approve such transfer pending resolution of the matter.

4. The Appendix to part 663 is amended as follows:

a. Under the index, the entry for II.E. is revised;

b. In paragraph II.E., the heading is revised, the existing text is redesignated paragraph II.E.(a), a new heading for newly redesignated paragraph II.E.(a) is added, and new paragraphs II.E.(b), II.E.(c), and II.E.(d) are added; and

c. Under paragraph III.B., the first paragraph of the introductory text is revised, to read as follows:

Appendix to Part 663—Groundfish Management Procedures

Index

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II. * * *

E. Guidelines for Determining the Numerical Specification of a Harvest Guideline or Quota: Allocation Between Limited Entry and Open Access Fisheries

(a) Numerical Specification of a Harvest Guideline or Quota.
(b) Treaty Indian Fisheries.
(c) Recreational Fisheries.
(d) Allocation Between Limited Entry and Open Access Fisheries.
(1) Allocation procedures.
(2) Limited entry allocation.
(3) Open access allocation.
(4) Open access allocation percentage.

* * * * *

II. * * *

E. Guidelines for Determining the Numerical Specification of a Harvest Guideline or Quota; Allocation Between Limited Entry and Open Access Fisheries

(a) *Numerical Specification of a Harvest Guidelines or Quota.* * * *

(b) *Treaty Indian Fisheries.* Certain amounts of groundfish may be set aside annually for tribal fisheries prior to dividing the balance of the allowable catch between the commercial limited entry and open access fisheries.

(c) *Recreational Fisheries.* Any specific allocation to the recreational fishery will be set aside annually prior to dividing the commercial allocation between the limited entry and the open access fisheries.

(d) *Allocation Between Limited Entry and Open Access Fisheries*—(1) *Allocation procedures.* Effective January 1, 1994, separate allocations for the limited entry and open access fisheries will be established annually for certain species and/or areas using the procedures described in § 663.21 and sections II.E. and H. of this appendix. The Council will also develop recommendations for allocations for the commercial limited entry and open access fisheries for certain separate species and/or areas for which the Council determines allocations are necessary.

(2) *Limited entry allocation.* The allocation for the limited entry fishery is the allowable catch (harvest guideline or quota excluding set asides under sections II.E.(b) and (c) of this appendix) minus the allocation to the open access fishery.

(3) *Open access allocation.* The allocation for the open access fishery is derived by applying the open access allocation percentage to the annual harvest guideline or quota after subtracting any set asides under sections II.E.(b) and (c) of this appendix. For management subareas where quotas or harvest guidelines for a stock are not fully utilized, no separate allocation will be established for the open access fishery until it is projected that the allowable catch for a species will be reached.

(4) *Open access allocation percentage.* (i) For each species with a harvest guideline or quota, the initial open access allocation percentage is calculated by:

(A) Computing the total catch for that species during the window period by

(*1*) Longlines and traps (or pots) not initially receiving a limited entry endorsement for that gear, and

(*2*) Exempted gear; and

(B) Dividing that amount by the total catch during the window period by all gear.

(ii) The following guidelines apply to recalculation of the open access allocation percentage. Any recalculated allocation percentage will be used in calculating the following year's open access allocation:

(A) *Adjustment to decrease.* If a gear type is prohibited by a state or the Secretary and a vessel thereby qualifies for a limited entry permit under § 663.35(a)(5); or if a small limited entry fleet is incorporated into the limited entry fishery under § 663.34(a)(3), the window-period catch of these vessels will be deducted from the open access fishery's historical catch levels and the open access allocation percentage recalculated accordingly.

(B) *Adjustment to increase.* The window-period catch of a vessel with a "B" gear endorsement for longline or trap (or pot) gear will count toward the open access allocation percentage after its "B" endorsement expires. The historic catch level of a vessel with a "B" gear endorsement for trawl gear will continue to count toward the limited entry fishery allocation after the "B" endorsement expires.

III. * * *

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B. * * *

Management measures are normally imposed, adjusted, or removed at the beginning of the fishing year, but may, if the Council determines it necessary, be imposed, adjusted or removed at any time during the year. Management measures may be imposed for resource conservation, social or economic reasons consistent with the criteria, procedures, goals, and objectives set forth in Amendment 4. Management measures for the open access fishery will be set consistent with the objectives set out in Amendment 6 at 14.2.2.6.

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Notices

Federal Register
Vol. 57, No. 141
Wednesday, July 22, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ACTION

Information Collection; Final Notice

AGENCY: ACTION.

ACTION: Notice on information collection.

SUMMARY: This notice sets forth the Agency's information collection requirements regarding handicap accessibility self-evaluations by recipients of Federal financial assistance from ACTION. Certain modifications have been made to the proposed optional checklist in response to comments and recommendations from program sponsors. The Office of Management and Budget (OMB) approved and assigned a clearance number to the certification form.

FOR FURTHER INFORMATION CONTACT: Nancy B. Voss, Director, Equal Opportunity Staff, ACTION, 1100 Vermont Avenue, NW., Washington, DC 20525—(202) 606–4812 (voice) or (202) 606–5256 (TDD).

SUPPLEMENTARY INFORMATION: Section 504 of the Rehabilitation Act of 1973, as amended, prohibits discrimination on the basis of disability by recipients of Federal financial assistance. Section 417 of the Domestic Volunteer Service Act (DVSA), Public Law 93–113, defines recipient of Federal financial assistance as any program, project or activity to which volunteers are assigned under ACTION's programs. Regulations implementing section 504 (45 CFR 1232.7(c)) require that recipients of Federal financial assistance determine if physical barriers in facilities or programmatic barriers cause discrimination against individuals with disabilities by preventing or interfering with their participation in programs conducted by the particular recipient.

The "Handicap Accessibility Self-Evaluation Certification" is the only form required by ACTION to be completed by the sponsors and stations. Each station or site must submit this form to its sponsor or project. The sponsor or project then submits a form to its ACTION State Program Office for the entire project. A copy of the documentation on work station and site self-evaluations and transition plans—which may be based on any Federal, State, local or other procedure or law that meets the requirements of Section 504 of the Rehabilitation Act of 1973 or on the attached self-evaluation form—may be submitted to the Older American Volunteer Program (OAVP) sponsor or VISTA project so the sponsor or project can more easily determine the accessibility of the program when viewed in its entirety.

Once a certification is submitted, a sponsor/project or station/site need not conduct another self-evaluation unless the physical or programmatic features of their programs or activities substantially change. The requirement that programs or activities be accessible is a continuing requirement, but the conduct of a self-evaluation is a one-time only requirement.

Discussion of Comments and Response

A total of 281 written comments were received in response to the two notices of proposed information collection. Many comments related to the prior ACTION Handicap Accessibility Guidebook, guidance, and procedures used by ACTION in implementing the self-evaluation requirement. Other comments related to the narrative portion of that Guidebook.

Each comment received, whether relating to the documents published for comment in the **Federal Register** or relating to other matters, has been reviewed and duly considered. The following text represents the Agency response to the substantive comments on the proposed certification form and/or checklist, as well as any subsequent modifications and individual word changes.

1. Legal Responsibility of ACTION and Its Recipients of Federal Financial Assistance

Many commenters cited what they felt the law and legal requirements are or what they should be. The actual requirements are set forth below.

As previously stated in the Supplementary Information section, Section 504 of the Rehabilitation Act of 1973, as amended, prohibits discrimination on the basis of disability by recipients of Federal financial assistance. Section 417 of the Domestic Volunteer Service Act (DVSA), Public Law 93–113, defines recipient of Federal financial assistance as any program, project, or activity to which volunteers are assigned under ACTION's programs. Regulations implementing section 504 (45 CFR 1232.7(c)) require that recipients of Federal financial assistance determine if physical barriers in facilities or programmatic barriers cause discrimination against individuals with disabilities by preventing or interfering with their participation in programs conducted by the particular recipient.

Although the DVSA defines recipient of Federal financial assistance as any place a volunteer is assigned under one of ACTION's programs, thereby including both sponsors or projects and stations or sites, ACTION sponsors and projects are, in essence, primary recipients of Federal financial assistance who extend Federal financial assistance (i.e., volunteers) to subrecipients (i.e., stations or sites). Both recipients and subrecipients are obligated, by virtue of receiving Federal financial assistance, to comply with the statutory and regulatory requirements.

The recipient of Federal financial assistance must assure that its programs as well as its activities, when viewed in its entirety, are accessible to individuals with disabilities. "Viewed in its entirety" means that participation in a program and access to facilities are guaranteed to individuals with disabilities even though not all work stations or sites may be accessible. A sponsor is not required to make each of its existing work stations or sites or every part of each work station or site accessible to and usable by individuals with disabilities. As long as a representative sample of stations or sites are accessible, the program is accessible when "viewed in its entirety."

The self-evaluation requirement applies to the program or activity receiving the Federal financial assistance; it also applies to evaluating accessibility for all individuals (i.e., employees, volunteers, and clients) who participate in the program or activity. While certain types of facilities may be anticipated to be more accessible than others, all types of facilities must

conduct a self-evaluation. Churches are not exempt from this requirement. The requirement does not apply, however, to individual homes in which clients are served.

2. Relationship to Americans With Disabilities Act Requirements

Many commenters thought ACTION's self-evaluation requirements implemented the Americans with Disabilities Act (ADA). Others questioned why, if public facilities have until July 1994 to comply with the accessibility requirements of the ADA, was ACTION performing this survey now rather than waiting until mid-1994.

The Government-wide regulations implementing section 504 of the Rehabilitation Act of 1973, which affect ACTION's sponsors and projects, went into effect in 1979 and were amended in 1990. The requirement for sponsors and projects to conduct self-evaluations, therefore, pre-dates passage of the ADA. The self-evaluation process described in this notice addresses bringing ACTION and its recipients of Federal financial assistance into compliance with this long-standing legal requirement.

While the accessibility requirements under section 504 are similar to the requirements under the ADA, they are not identical. ACTION has no authority to enforce the provisions of the ADA as it applies to its grantees. As the ADA relates to ACTION's recipients of Federal financial assistance, the Department of Justice is responsible for compliance by public accommodations, commercial facilities, and State and local governments, and the Equal Employment Opportunity Commission is responsible for compliance with the employment practices provisions.

3. Duplication of Effort

Many commenters felt ACTION's requirements resulted in a duplication of effort since ACTION's regulatory requirement is similar to the requirement found in the section 504 regulations of all other Federal agencies which provide Federal financial assistance. However, each Federal granting agency is responsible for ensuring compliance with its own regulations by its own recipients.

To eliminate duplication of effort, ACTION has explicitly stated that any recipient which has already completed a self-evaluation, either for ACTION or for another agency, is not required to conduct a new self-evaluation in order to fulfill ACTION's self-evaluation requirements. Similarly, conducting the self-evaluation under ACTION'S guidelines should fulfill the section 504 requirements of other Federal agencies.

4. Legal Liability

Many commenters mentioned legal liability. It is important to remember that ACTION and its sponsors or projects and its stations or sites which have not completed their self-evaluations are currently in violation of section 504 of the Rehabilitation Act of 1973. This self-evaluation process was implemented to bring ACTION and its recipients of Federal financial assistance into compliance with section 504 and provide some degree of assurance against legal liability.

A law suit would only have standing if there was an allegation that discrimination took place because of noncompliance with the requirements of the Rehabilitation Act of 1973. The only remedy for failure to conduct a self-evaluation or misrepresenting a self-evaluation would be for ACTION to institute funding sanctions against a sponsor or project under other ACTION regulations. If a law suit were filed against a station or site for discrimination, only the volunteer station would be liable unless it could also be shown that the sponsor, project or ACTION was aware of the discrimination and took no corrective steps. In particular, it should be noted that volunteers and staff may record data, e.g., measurements taken, but only the designated management official who signs the certification form has the authority to make a determination regarding accessibility.

As part of ACTION's oversight, the Agency staff review the self-evaluations process during their normal site monitoring visits to assure compliance with section 504 requirements.

5. Procedural Requirements

Some commenters referred to the availability of the Guidebook, checklist, and/or certification forms from ACTION. In response to our previous Guidebook issuance, we distributed the following to our more than 750 RSVP projects and 56,000 work stations: 10,000 guidebooks, 45,000 checklists and 45,000 certification forms. We do not know yet how many sponsors and stations completed their self-evaluations prior to the publication of the Agency's notice in the **Federal Register**. We intend to provide the new guidebook and forms to sponsors and stations which did not complete the previous process and which request them.

A few commenters asked who was the appropriate official to sign the form. The form should be signed by an appropriate management official who has authority to ensure proper completion of the self-evaluation and to commit the agency to remedial actions, if necessary. Since the organizational structures of sponsors and projects vary widely, it is up to the sponsor or project to identify the level of this appropriate official.

Other commenters said maintaining documentation will create a storage problem. A copy of the documentation on station and site self-evaluations and transition plans may be submitted to the sponsor or project. This allows the sponsor or project to more easily determine the accessibility of the program when viewed in its entirety. It also can be used as documentation to meet the section 504 requirements of other Federal agencies.

6. Training and Technical Assistance

Many of the commenters suggested that ACTION needed to provide more training and technical assistance.

In the area of training, last year ACTION presented to all Agency staff and the majority of its project directors a one-hour video on the reasons for and the consequences of non-accessibility from an historic perspective. The presenter, a member of the staff of the Center on Aging at the University of Maryland who herself is disabled, also addressed why accessibility benefits the able-bodied community as well as the disabled. In addition, last year ACTION conducted training on the Rehabilitation Act and the self-evaluation requirement at a plenary session at each of ACTION's nine regional training conferences which were provided for ACTION project directors.

Concerning technical assistance, the Handicap Accessibility Guidebook was produced by ACTION as a technical assistance tool for use by ACTION staff and grantees. Furthermore, an audio tape of a one-hour question and answer session with ACTION staff and the RSVP Association board members was reproduced and made available upon request to project directors. In addition, each ACTION State Program Director met with the leading state organization that deals with disability issues. The purpose of the meeting was to obtain technical assistance and advice about how to facilitate projects and work stations in their completion of the self-evaluations and certifications. Subsequent sessions with project directors were also scheduled. Lastly, the project directors were provided with additional materials including a list of organizations in their states, e.g., Centers for Independent Living, that could provide assistance.

ACTION will issue the revised handbook, optional checklist and

certification form with OMB approval. These materials will be distributed, along with supplemental guidance, to ACTION staff and all appropriate sponsors and volunteer stations that have yet to conduct their self-evaluations. (As of December 31, 1991, more than 375 ACTION sponsors had successfully completed their self-evaluations.) ACTION staff will also be fully briefed on any revisions in policy and procedures so that they can continue to provide technical assistance to project directors.

7. Estimated Time Requirements

Many commenters concluded that it takes more time than the 2 hours estimated by ACTION to conduct a self-evaluation. Some commenters included staff training time, assembling support data, and follow-up conversations in their estimates. Those who indicated they had completed or nearly completed the self-evaluations generally said it took from 1¾ to 4 hours to complete, depending on travel time. ACTION had previously determined that the average completion time was 2 hours after observing projects conduct self-evaluations.

The method by which a sponsor or project and station or site elect to conduct their self-evaluations will greatly impact on the amount of time required. ACTION has not prescribed any particular method by which the self-evaluation may be conducted. (The only proscription by ACTION is that a recipient may not *require* its volunteers to conduct the self-evaluations.) Some methods by which the actual self-evaluations may be conducted include:

—Recruiting a volunteer to conduct the self-evaluation
—Obtaining the assistance of local organizations for individuals with disabilities
—Using college architectural students
—Training a cadre of volunteers to conduct the self-evaluations
—Obtaining the assistance of local corporations or unions
—Contracting out
—Having project staff conduct the self-evaluations
—Asking each station or site to conduct its own self-evaluation

We recognize that all of these options are not available to all sponsors or projects, but most will have several options open to them. The choice of an option(s) may significantly impact the amount of time required to complete the self-evaluations.

After reviewing the comments, the agency has changed the average completion time from 2 hours to 4 hours.

8. Implementation Costs

Many commenters said the self-evaluation process was costly in terms of postage, paper, telephone calls, printing and reproduction of necessary forms, staff time travel expenses, meals, etc. Some said they felt that ACTION should reimburse the sponsors or projects and stations or sites for the evaluation expenses they incurred.

Compliance with the Rehabilitation Act is a prerequisite to being eligible to receive Federal funding. While the Agency has assumed, and will continue to assume, the cost for all ACTION-conducted training and publications, consistent with Federal law and regulations, the cost of conducting the self-evaluations is the responsibility of the applicant for Federal assistance. Therefore, no reimbursement will be provided to ACTION sponsors or projects and stations or sites.

It should be noted that the appropriate management officials of the recipient of Federal financial assistance are responsible for assuring accessibility of its program or activity when considered in its entirety. Unless mandatory accessibility standards apply based on new construction or alteration after receiving Federal financial assistance, sometimes physical alterations are unnecessary and program changes may result in accessibility. Facility owners are responsible for ensuring that their facility complies with all Federal, State, and local accessibility standards and requirements.

9. Checklist Form

The optional "Handicap Accessibility Checklist" is one way by which a recipient may conduct its handicap accessibility self-evaluation. Although prior guidance required the use of the ACTION checklist or a similar Federal survey, recipients may not use alternative procedures in order to comply with these regulations. Further, any recipient which has already completed the self-evaluation need not conduct a new self-evaluation.

Some commenters said the checklist was too long and detailed, while others said it was not detailed enough. ACTION recognized most persons conducting the self-evaluation will not have expertise in the area of accessibility. Therefore, the optional checklist "walks" the evaluator through the self-evaluation. Not accessibility, but it also includes a narrative discussion at the beginning of each physical element.

Many commenters noted that there are checklists developed by other entities which are not as lengthy or detailed as ACTION's. Their implied question is whether the shorter forms meet the self-evaluation requirements for section 504. The checklist in ACTION's Guidebook is optional, and there is no specific format required under section 504. ACTION's regulations require each recipient of Federal financial assistance to:

Evaluate its current policies, practices an effects thereof; modify any that do not meet the requirements of this part; and take appropriate remedial steps to eliminate the effects of any discrimination that resulted from adherence to these policies and practices (45 CFR 1232.7(c)).

Any self-evaluation which fulfills this regulatory requirement meets the self-evaluation requirement for section 504. If requested to do so, grantees bear the burden of independently substantiating how they fulfilled this regulatory requirement and demonstrate how they are in compliance with any applicable design standard. As part of its oversight responsibilities, ACTION staff will review during their normal site monitoring visits the self-evaluation process used by a sponsor or project and station or site to assure that a good faith effort was made to comply with section 504 requirements.

Several commenters said the programmatic portion of the checklist contains technical language which is difficult to understand. No specific examples of such language, however, were provided in the comments. The Guidebook contains an extensive discussion on how to evaluate programs and activities; this discussion should clarify the language in the checklist.

Related to the programmatic portion, one commenter asked if the phrase in the FGP Handbook regarding "physically able to perform the tasks assigned" is now illegal? The requirement is that volunteers be able to perform the essential functions of the position, with or without reasonable accommodation.

One commenter said the checklist interchanged words such as "maximum," "minimum," and "at least," and gave two specific examples. These examples were in error in the original checklist, and were corrected in the checklist published for comment in the **Federal Register**. Therefore, no further changes have been made.

Some commenters said the directions and self-evaluation are not written in an easily understood format, as is required for learning disabled individuals. The requirement is not that everything be written in such a format, but that it be

available within a relatively short time period if requested.

Other commenters said completion of the checklist requires architectural and mathematical computations. No such computations are required, and the guidebook contains a chart to be referenced when measuring slopes and includes a practical way to approximate measuring door pressures (i.e., by comparing it to the pressure required to open a refrigerator door).

Commenters recommended using a "box system" for checking off responses on the optional checklist. Columns for "Yes," "No," and "N/A" have been incorporated into the final optional checklist. Others requested that the programmatic section be arranged in a multiple choice or checklist format. The information considered in this part of the optional checklist is not conducive to that format and therefore no change was made.

10. Certification Form

Some commenters recommended having certification forms for stations or sites which are different from those for sponsors or projects. We believe one form is less confusing and is in keeping with the intent of the Paperwork Reduction Act. Therefore, no change has been made.

Dated July 10, 1992.

Jane A. Kenny,

Director, ACTION.

Handbook 240: Appendix 1

Handicap Accessibility Checklist

A. Program Accessibility

B. Building and Site Accessibility

This checklist is presented as a guide to identify physical barriers that might restrict program access to individuals with disabilities. Use of this checklist is not mandatory. The building/site criteria are based on the Uniform Federal Accessibility Standards (UFAS) and specific citations are provided. If you answer "No" to any of the questions, it does not necessarily mean noncompliance because other methods of providing program access may be used.

This checklist is available on audio cassette or in large print from ACTION, Equal Opportunity Director, 1100 Vermont Avenue NW., Washington, DC 20525—(202 606–4812 (voice), (202 606–5256 (TDD).

Program Accessibility: Suggestions for a Self-Evaluation

Background

A grantee may not deny the benefits of its programs, activities, and services to individuals with disabilities because its facilities are inaccessible. A grantee's services, programs, or activities, when viewed in their entirety, must be readily accessible to and usable by individuals with disabilities. This standard, known as "programs accessibility," applies to all existing facilities of a grantee. Grantees, however, are not necessarily required to make each of their existing facilities accessible.

Grantees may achieve program accessibility by a number of methods. In many situations, providing access to facilities through structural methods, such as alteration of existing facilities and acquisition or construction of additional facilities, may be the most efficient method of providing program accessibility. A grantee may, however, pursue alternatives to structural changes in order to achieve program accessibility. Nonstructural methods include acquisition or redesign of equipment, assignment of aides to beneficiaries, and provision of services at alternate accessible sites.

A self-evaluation is a grantee's assessment of its current policies and practices to determine whether there are obstacles to the grantee's program or activities. The self-evaluation identifies and corrects those policies and practices that are inconsistent with section 504 requirements. As part of the self-evaluation, a grantee should:

1. Identify all of the grantee's programs, activities, and services; and

2. Review all the policies and practices that govern the administration of the grantee's programs, activities, and services.

Normally, a grantee's policies and practices are reflected in its regulation, administrative manuals or guides, policy directives, and memoranda. Other practices, however, may not be recorded and may be based on custom.

Once a grantee has identified its policies and practices, it should analyze whether these policies and practices adversely affect the full participation of individuals with disabilities in its programs, activities and services. In this regard, a grantee should be mindful that although its policies and practices may appear harmless, they may result in denying individuals with disabilities the full participation of its programs, activities, or services. Listed below are several areas a grantee should consider when conducting its self-evaluation.

Element 1: Participation of Individuals With Disabilities in the Self-Evaluation Process (see TAG–88–9)[1]

a. Are individuals with disabilities and other interested persons involved in the self-evaluation process?

b. Is the general public involved in the self-evaluation process?

Element 2: Policies and Practices That Limit the Participation of Individuals With Disabilities in the Organization's Programs and Activities

Consider your organization's formal and informal program eligibility and admission criteria or licensing standards. Particular attention should be paid to policies incorporating or establishing:

—Physical or mental fitness or performance requirements;
—Safety standards;
—Testing requirements;
—Educational requirements;
—Work experience requirements;
—Requirements based on disability;
—Requirements that prohibit participation because of disability; and
—Insurability requirements.

Do any of these standards or requirements have the direct or indirect effect of excluding or limiting the participation of individuals with disabilities in your organization's programs or activities?

Which of these standards or requirements will be altered or eliminated to allow participation by individuals with disabilities? How will your organization communicate these changes to your organization's staff and the public?

Which of these standards or requirements will be retained by your organization? What is your organization's justification for their retention?

Element 3: Information and Training for Staff

What staff members need to be aware of your organization's obligations and policies which enable individuals with disabilities to participate in your organization's programs or activities?

How has your organization informed/trained these staff members?

[1] Copies of Technical Assistance Guides (TAG's), which provide detailed technical implementation information, are available from the Coordination and Review Section, Civil Rights Division, U.S. Department of Justice, Washington, DC 20530, (202) 307–2222 (voice) or (202) 307–7678 (TDD). While TAG's may be helpful in gaining detailed knowledge of an area of accessibility, they are not necessary for completing this survey.

Element 4: Use of Contractors

Does your organization use contractors to conduct programs or activities on behalf of your organization that are designed to provide services to your organization's beneficiaries? [If not, go to next element.]

How does your organization ensure both contractors and your organization's procurement officials are aware of their obligations to facilitate participation of individuals with disabilities in programs or activities contractors operate on behalf of your organization?

How does your organization monitor fulfilling this obligation?

Element 5: Transportation

Does your organization provide transportation to volunteers, beneficiaries, visitors, etc.? [If not, go to next element.]

What procedures does your organization follow to make transportation accessible to persons with mobility, visual, and hearing impairments?

Element 6: Telephone Communications

How does your organization communicate telephonically with hearing impaired individuals?

Element 7: Documents and Publications

How does your organization make documents and publications readily accessible to and usable by visually impaired persons? Does your organization use audiotape, large print, Braille, computer disk or something else?

Does your organization portray individuals with disabilities in your organization's documents and in publications?

Element 8: Meetings

Does your organization require that meetings, hearings, and conferences be held, upon request, in accessible locations?

Are interpreters, readers, and/or adaptive equipment provided in an expeditious manner, when requested, for meetings, interviews, conferences, public appearances by organization officials, and hearings?

Does your organization ensure that individuals with hearing impairments who do not read sign language can participate effectively in meetings, conferences, and hearings via assistive listening devices or other means?

Element 9: Audio-Visual Presentations

How does your organization make audio-visual presentations accessible to individuals with visual and hearing impairments?

Does your organization portray individuals with disabilities in audio-visual presentations?

Element 10: Emergency Evacuation

What equipment and/or procedures does your organization use to notify individuals with visual, hearing, and mobility impairments of emergency evacuation procedures?

Element 11: Accessible Equipment

In providing services to your beneficiaries, is it necessary for your beneficiaries to use electronic or other types of equipment (such as computer terminals, copying machines, etc).

If so, how do you ensure that individuals with disabilities are provided access to and use of such equipment?

Element 12: Reasonable Accommodation (45 CFR 1232.10)

Standard: A grantee shall make reasonable accommodation to the known physical or mental limitations of an otherwise qualified beneficiary or volunteer with a disability unless the grantee can demonstrate that the accommodation would impose an undue hardship on the operation of its program.

Reasonable accommodation may include (1) making facilities used by beneficiaries, or volunteers readily accessible to and usable by individuals with disabilities, and (2) acquisition or modification of equipment or devices, the provision of readers or interpreters, and other similar actions. In determining whether an accommodation would impose an undue hardship on the operation of your program, factors to be considered include:

a. The overall size of your organization's program with respect to number of volunteers, number and type of facilities, and size of budget;

b. The type of your organization's operation, including the composition and structure of your organization's volunteer force;

c. The nature and cost of the accommodation needed.

Does your organization have policies that ensure reasonable accommodation is made to the known physical or mental limitations of an otherwise qualified beneficiary or volunteer with a disability?

Element 13: Notification

How does your organization notify all persons (participants, beneficiaries, volunteers, visitors, and other interested parties, including those with impaired vision and/or hearing) of your organization's policy not to discriminate against qualified individuals with disabilities?

How does your organization notify all persons that your meetings, hearings, and conferences will be held in accessible locations and that auxiliary aids will be provided, upon request, to participants with disabilities?

How does your organization notify all persons about how and with whom to file a discrimination complaint on the basis of disability and what procedure are they told to follow?

Building and Site Accessibility—General Information _____

Organization Name: _____

Facility Name and Address (with city, state, and zip code):

_____

_____

_____

Date reviewed: _____

Reviewer's Name and Title: _____

Address (if different from above): _____

_____

Phone (including area code): _____

Programs and Activities Conducted in Facility: _____

Purpose of this checklist: This checklist will help you identify physical barriers to program access in existing facilities. It provides guidance about the way building elements should be constructed to achieve maximum accessibility. Completion of the checklist will give you an idea of how far the facility is from the ideal, but failure to meet the standards in the checklist does not, by itself, mean that a building element constitutes a significant problem in terms of program accessibility. Consideration should be given to how great the variation is and what its effect is on the participation of individuals with disabilities in the program. If the effect on access is significant, consideration should be given to making physical changes in the facility or otherwise modifying the program in order to make the program accessible.

This checklist is available on audio cassette or in large print from ACTION, Equal Opportunity Director, 1100 Vermont Avenue, NW., Washington, DC 20525—202/606-4812 (voice), 202/606-5256 (TDD).

Tools needed to conduct evaluation of building and site accessibility: Generally, the only tool necessary to complete this checklist will be a tape measure. This checklist is generally based on the Uniform Federal Accessibility Standards (UFAS), which should be referred to for further information.

Element 1: Accessible Route (UFAS 4.1–4.7)

Need: People who walk with difficulty or use wheelchairs, crutches, canes or walkers need a wide, smooth, level, and firm surface. Sight-impaired people need a path free of hazards such as low-hanging or protruding objects undetectable by a cane.

	Yes	No	N/A
1. At least one accessible route connects all parts of facility?			

Yes No N/A

2. Minimum of 36" clear width except at doors?
3. Is there at least a 60" x 60" passing space at reasonable intervals?
4. Minimum of 80" clear headroom?
5. Surface: non-slip, firm and stable?
6. Slope does not exceed 1:20? [If greater than 1:20, apply criteria for ramps and curb ramps.]
7. Are routes not interrupted by ½" or more changes in level or steps?
8. Are grates set in the direction of the route no more than ½" wide?
9. At least one accessible route from transportation stops, parking, street and/or sidewalks?

Comments:

Element 2: Parking (UFAS 4.6)

Need: People with mobility impairments need parking spaces wide enough to open car doors fully and get out with a wheelchair or mobility aid, that are close to the building or facility and that are on an accessible route from parking lot to building.

1. If any visitor parking is provided, are spaces reserved for individuals with disabilities? Suggested guideline:

Total parking in lot	Accessible spaces
1–25	1
26–50	2
51–75	3
76–100	4
101–150	5
151–200	6
201–300	7
301–400	8

2. Reserved space(s) located closest to accessible entrance; on accessible route?
3. Is the space(s) at least 96" wide?
4. Access aisle next to space at least 60"
5. Slope of space/access aisle no more than 1:50?
6. Accessibility symbol on space; mounted at a height unobscurable by a vehicle?

Comments:

Element 3: Ramps (UFAS 4.8)

Need: People who use wheelchairs need gently sloped ramps with handrails, no drop-offs, and a smooth, stable surface with level top and bottom platforms for resting and turning.

Yes No N/A

1. Slope is least possible and no more than 1:12?

Yes No N/A

2. Cross slope (perpendicular to direction of travel) no more than 1:50?
3. Surface: non-slip, firm and stable?
4. Walls, railings or curbs at least 2" high to prevent slipping off ramp?
5. Level landing is as wide as ramp and at least 60" long at top and bottom of ramp and at each turn of ramp?
6. Ramp is at least 36" wide and rises no more than 30"?
   a. If ramp rise is more than 6" and length is more than 72", are there handrails between 30–34" high which extend 1' beyond top and bottom of ramp?
   b. Ends and edges rounded smoothly?
   c. Solidly anchored and with fittings that do not rotate?
   d. Parallel with slope of ground surface?

Comments:

Element 4: Entrances and Interior Doors (UFAS 4.13 and 4.14)

Need: People with mobility impairments need a building entrance which is wide, smooth, level or ramped. Entrance doors must be wide, have adequate space for maneuvering on both the pull and push sides, and require light pressure and no twisting to operate.

Yes No N/A

1. At least one principle entrance, located on accessible route?
2. Accessible doors are standard single or double-leaf hinged doors, not revolving doors/turnstiles?
3. Is the door width at least 32" (if double doors are used, one must comply)?

Yes No N/A

4. Is door hardware no higher than 48" and push/pull type or lever operated?

Yes No N/A

5. Is the maximum opening force 8.5 lbs. on exterior hinged doors (about as much as needed to open a refrigerator door); 5 lbs. on interior hinged, sliding, or folding doors?
6. Are all thresholds no higher than ½" with beveled edge, and a slope no greater than 1:2?
7. Is there adequate maneuvering clearance at doors?

Comments:

Element 5: Elevators (UFAS 4.10)

Need: All persons with disabilities benefit from elevators. For maximum usability, elevators must provide adequate maneuvering space, time to get to and enter the cab, be conveniently located, and have marked controls. Blind persons benefit from audible indications on direction of travel and floors, and tactile markings at all controls. Hearing-impaired persons need this information to be visual. Lifts benefit people with mobility impairments; they cannot substitute for elevators in new construction, but they can be a successful solution to existing stairs than cannot be ramped.

Yes No N/A

1. At least one serves each level on accessible route in a multi-story facility, unless levels are connected by ramps?
2. Is it an automatic self-leveling elevator with re-opening devices?
3. Cars dimensions: if door opens in the center, floor at least 51" × 80"; if door opens on one side, floor at least 51" × 68"?
4. Hall call buttons: centered 42" or less from floor and lighted?
5. Car controls: highest control 48", buttons at least ¾" and marked with raised characters?
6. Door remains open 3 seconds?
7. Visual and audible floor indicators provided?
8. If emergency information systems provided, audible alarms (bells or audible instructions) and visual signals (flashing alarms or written instructions) are used?
9. Automatically corrects over/under-travel within ½" when stopping at floor?

Yes No N/A

10. Door width at least 36"?
11. Floor is firm, stable and non-slip?
12. No more than 1¼" gap between car and landing platform?

Comments:

Element 6: Stairs (UFAS 4.9)

Need: People with sight impairments need stairs of uniform tread and width, with handrails which guide them and which indicate landings.

Yes No N/A

1. Stair step heights are uniform; step depths are at least 11" and uniform?
2. No overhangs on steps greater than 1½"; overhangs are curved?
3. Handrails meet requirements (discussed under ramps)?

Comments:

Element 7: Restrooms (UFAS 4.16–4.26)

Need: People with mobility impairments need restrooms that they can get to and use easily and safety. For maximum flexibility, fixtures need adequate clear floor space for close approach and turning. Some individuals require sturdily mounted grab bars for support or transfer. Controls and hardware must be within reach and easily operable. Hot, sharp, abrasive, or protruding objects are hazards.

Yes No N/A

1. If there are restrooms, at least one is provided on an accessible route?
2. Entrance door has at least 32" clear opening; level handle or push/pull type hardware; identified by accessibility symbol?
3. Unobstructed space to allow for wheelchair?
4. Toilet stall door at least 32" wide?
5. Adequate space for maneuvering in stalls? [Refer to standards for requirements for different configurations.]

Yes No N/A

6. In stalls, front partition and at least one side partition provide toe clearance at least 9" above the floor (if depth of the stall is greater than 60", toe clearance not needed)?
7. Grab bars are 33–36" high; located on back and side of stall; 1–1/4–1–1/2" diameter; 1–1/2" from wall; support 250 lb. force in any direction at any point; sharp edges/protrusions eliminated?
8. Toilet is 17"–19" high and located maximum 18" from center of toilet to closest wall?
9. For wall-mounted urinal, the basin opening is no more than 17" from floor; elongated rim; clear floor space 30" by 48" in front of urinals?
10. Toilet paper dispenser at least 19" above floor?
11. Sinks: height maximum 34"; drain and hot water pipes insulated; minimum 29" clearance below apron of sink?
12. Faucets: controls mounted no more than 44" above ground; hand-operated or automatic but do not require tight gripping, pinching or twisting of wrist?
13. Where there are mirrors, bottom edge maximum of 40" above floor?
14. Towel dispenser and disposal unit: operable part not more than 40" above floor?

Comments:

Element 8: Drinking Fountains (UFAS 4.12(9))

Need: Persons in wheelchairs need drinking fountains mounted low so they can reach the spout. They need to be able to pull up under the fountain or along its side. Provision of a paper cup dispenser may be an appropriate alternative. Persons who have difficulty using their hands need controls that can be easily operated.

Yes No N/A

1. If fountains are available, 50% accessible on each floor; if only one is available, is it on an accessible route?

Yes No N/A

2. Spout mounted 36" above floor in front of unit with water flow at least 4" high and parallel to front of unit?
3. Controls operable with one hand without grasping or twisting?
4. Wall mounted: bottom of apron to floor at least 27"; built in: at least 30" x 48" in front of fountain?

Comments:

Element 9: Hazardous Areas and Warning Signals (UFAS 4.1.2. and 4.28)

Need: People with visual impairments need audible emergency warning systems and to be alerted by touch to hazardous areas. Persons with hearing impairments need visual alarms.

Yes No N/A

1. If warning systems are provided, both visual (flashing) and audible provided?
2. Door knobs to hazardous areas roughened; doors labeled in raised or routed letters?

Comments:

Element 10: Assembly, Meeting and Conference Areas (UFAS 4.1 and 4.33)

Need: People who use wheelchairs need a level area from which they can view the performance area. Both the seating area and the performance area must be on an accessible route. Persons with hearing impairments need an auxiliary listening system.

Yes No N/A

1. Wheelchair spaces available? Suggested guideline:

Total capacity	Wheelchair locations
50–75	3
76–100	4
101–150	5
151–200	6
201–300	7
301–400	8

2. Wheelchair locations adjacent to accessible route and, whenever possible, ramped to different seating levels?
3. Performing areas on an accessible route?

	Yes	No	N/A
4. For large areas, amplification system available (volume controls, wireless headphones, infrared—audio loops and radio frequency are acceptable)?			

Comments:

Element 11: Public Telephones (UFAS 4.1.2. and 4.31)

Need: Persons who use wheelchairs need adequate clear floor space to pull up to the telephone and a low mounting height so they can reach all operable parts. Persons with hearing impairments need volume controls.

	Yes	No	N/A
1. If public telephones, at least one accessible per floor?			
2. Located on an accessible route with clear floor space 30" × 48" in front of phone?			
3. Highest operable control 48" high for front approach, 54" for parallel approach?			
4. Push button controls?			
5. Any provision for the hearing impaired?			

Comments:

Element 12: Picnic Areas

Need: Persons in wheelchairs need tables with one end extended or with a portion of a bench removed so that the table legs or benches do not prohibit access. Picnic tables need to be on an accessible route and located on a firm, level surface. Grills and trash receptacles need to be at an accessible height. Grills need to be located on a paved level textured surface, and trash receptacles need to have rounded corners so as not to be a safety hazard to visually-impaired persons.

Comments:

Element 13: Exhibits, Signs and Information Displays

Need: Persons with disabilities need exhibits, signs and information displays adequately lighted, in high-contrast colors, in large, easy-to-read print, and at levels where the material may be read by short people or by persons in wheelchairs. Tactile objects allow visually-impaired persons to enjoy exhibits and displays. Audio information should be available to hearing-impaired persons in some other format.

Comments:

Element 14: Seating, Tables, and Work Areas (UFAS 4.32)

Need: Persons in wheelchairs need seating with flat, clear floor space in front of tables, counters, and work areas, as well as sufficient knew clearance.

Comments:

Element 15: Other Building Elements and Specialized Facilities

Other building elements and special use facilities are not covered by these forms. Where access to these elements and facilities is essential for individuals with disabilities are to participate fully in your program or activity.

- Bathing facilities and showers—UFAS 4.23
- Storage facilities—UFAS 4.25
- Windows—UFAS 4.12
- Dwelling units—UFAS 4.34
- Food service facilities—UFAS 5.0
- Health care facilities—UFAS 6.0
- Libraries—UFAS 8.0
- Mercantile—UFAS 7.0

Copies of the UFAS may be obtained from ACTION State Offices.

Handicapped Accessibility Self-Evaluation Certification

Organization Name: _____

Address: _____

_____

Telephone Number (with Area Code): _____

I certify that a handicap accessibility self-evaluation has been:

_____ Completed on _____ (date)

_____ Partially completed and will be done on _____ (date)

The results of the self-evaluation(s) is (are) as follows:

_____ The recipients' program, when viewed in its entirety, is accessible and no corrective actions are required.

_____ The recipient's program, when viewed in its entirety, is accessible, but some corrective actions will be made.

_____ The recipient's program, when viewed in its entirety, is not accessible. FOR SPONSOR ONLY: Corrective action will be made by:

_____

(date)

I understand that, if the organization has 15 or more employees, information on how the self-evaluation was conducted is to be made available for public inspection for 3 years after its completion. I also understand that this information will be available to ACTION officials upon request.

_____

(date)

_____

(signature)

_____

(name/title of responsible official)

Each OAVP station and VISTA site must submit this certification form to its OAVP sponsor to VISTA project. Each OAVP sponsor and VISTA project must submit this one form to its ACTION State office.

[FR Doc. 92-16968 Filed 7-21-92 8:45 am]

BILLING CODE 6050-28-M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 92-032-2]

Public Meeting; Veterinary Biologics

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of public meeting.

SUMMARY: This is the second notice to producers of veterinary biologics and other interested persons that we are holding the fourth annual public meeting to discuss current regulatory and policy issues related to the manufacture and distribution and use of veterinary biological products. The agenda includes but is not limited to program updates; compliance and regulatory issues; licensing issues; consumer views on veterinary biologics; in vitro testing; international harmonization of regulation of veterinary biologics; poultry issues; National Veterinary Services Laboratories (NVSL) issues; biotechnology issues; Veterinary Biologics Field Operations (VBFO) issues; informal meetings with personnel from Veterinary Biologics (VB), VBFO, and NVSL; and open discussion for presentation of comments by attendees.

PLACE, DATES, AND TIMES OF MEETING: The fourth annual public meeting will be held in the Scheman Building at the Iowa State Center, Ames, Iowa, 50011, on Tuesday, August 18, 1992, from 8 a.m. to 5 p.m. and Wednesday, August 19, 1992, from 8 a.m. to 4 p.m.

FOR FURTHER INFORMATION CONTACT: Ms. Lorie Lykins; Veterinary Biologics Field Operations; Biotechnology, Biologics, and Environmental Protection; Animal and Plant Health Inspection Service; U.S. Department of Agriculture; 223 South Walnut Avenue, Ames, Iowa 50010, (515) 232-5785.

SUPPLEMENTARY INFORMATION: APHIS previously announced that it was holding the fourth annual meeting on veterinary biologics in Ames, Iowa, in August, 1992 (See 57 FR 8432, March 10, 1992). In its notice for the meeting, APHIS requested interested persons to submit topics to be included in the meeting's agenda. Based on the submissions received and other considerations, the agenda for the fourth annual meeting includes but is not limited to the following topics:

1. Program updates;
2. Compliance and regulatory issues;
3. Licensing issues;
4. Consumer views on veterinary biologics;
5. In vitro testing;
6. Breakout sessions;

a. International harmonization;
b. Poultry issues;
c. NVSL issues;
d. Biotechnology issues;
e. VBFO issues;
f. Informal meetings with personnel from VB, VBFO, or NVSL;
7. Open discussion.

During the "open discussion" portion of the meeting, attendees will have the opportunity to present their views on any matter concerning the APHIS veterinary biologics program. Comments may be either impromptu or prepared. Persons wishing to make a prepared statement should indicate their intention to do so at the time of registration, by indicating the subject of their remarks and the approximate time they would like to speak. APHIS welcomes and encourages the presentation of comments at the meeting.

Registration forms, lodging information, and copies of the complete agenda may be obtained from the person listed under "**FOR FURTHER INFORMATION CONTACT**". Advance registration is required. The deadline for registration is August 10, 1992. Please note that the meeting is scheduled to end by 4 p.m. on Wednesday, August 19, 1992.

Done in Washington, DC, this 17th day of July 1992.

Robert Melland,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92-17281 Filed 7-21-92; 8:45 am]

BILLING CODE 3410-34-M

Forest Service

Revised Land and Resource Management Plan for the George Washington National Forest, Alleghany, Amherst, Augusta, Bath, Botetourt, Frederick, Highland, Nelson, Page, Rockbridge, Rockingham, Shenandoah, and Warren Counties, VA, and Hampshire, Hardy, Monroe, and Pendleton Counties, WV

AGENCY: Forest Service, USDA.

ACTION: Revised notice; revised availability dates for final environmental impact statement and addition of a cooperating agency.

SUMMARY: In January 1992 the Forest Service released the Draft Environmental Impact Statement for the Revised Land and Resource Management Plan for the George Washington National Forest. As a result the agency has received more than 4,300 letters of comment. To allow sufficient time to adequately analyze these letters and make appropriate changes in the preparation of the Final Environmental Impact Statement and Revised Land and Resource Management Plan for the George Washington National Forest, the agency is revising the dates for the availability of the final environmental impact statement. In addition the U.S. Department of the Interior's Fish and Wildlife Service has agreed to be a cooperating agency in the preparation of the final environmental impact statement.

FOR FURTHER INFORMATION CONTACT: Ronald W. Lindenboom, Interdisciplinary Team Leader, George Washington National Forest, Harrison Plaza, P.O. Box 233, Harrisonburg, Virginia 22801, phone [703] 433-2491.

SUPPLEMENTARY INFORMATION: The Notice of Intent (NOI) to prepare an environmental impact statement to revise the Land and Resource Management Plan for the George Washington National Forest was published in the **Federal Register** for November 2, 1989 (54 FR 46280-46281). A revision to the NOI was published in the **Federal Register** October 23, 1990 (55 FR 42744-42745) changing the availability dates of the draft and final environmental impact statements.

The final environmental impact statement was scheduled to be filed with the Environmental Protection Agency (EPA) and available for public review by May 1992. It is now expected to be available by December 1992. At that time EPA will publish a notice of availability of the draft environmental impact statement in the **Federal Register.**

The U.S. Department of the Interior's Fish & Wildlife Service has agreed to be a cooperating agency in the preparation of the final environmental impact statement. They will be providing information on the recovery of the Cowknob Salamander (*Plethodon punctatus*), a species proposed for listing as Federally endangered. Cowknob Salamander is found in Virginia and West Virginia along the crest of the Shenandoah Mountains in an area approximately 24 miles long by 1 mile wide. The total range of this species lies within the boundaries of the George Washington National Forest.

Dated: July 16, 1992.

Marvin C. Meier,

Deputy Regional Forester.

[FR Doc. 92-17218 Filed 7-21-92; 8:45 am]

BILLING CODE 3410-11-M

Eagle Creek Timber Sale(s), Mt. Hood National Forest, Clackamas County, OR

AGENCY: Forest Service, USDA.

ACTION: Revision of a notice of intent to prepare an environmental impact statement.

SUMMARY: This notice of intent revises the notice of intent to prepare an environmental impact statement (EIS) for the Eagle Creek Timber Sales(s), Mt Hood National Forest, Clackamas County, Oregon, published on April 15, 1991, in the **Federal Register** (56 FR 15071). Following preliminary scoping and environmental analysis, the Mt. Hood National Forest has changed the proposed action and the timeline for the release of the draft and final EIS.

The proposed action in the original notice of intent was described as follows: The proposed Eagle Creek Timber Sales will harvest approximately 450 acres of timber and build about five miles of access road beginning in fiscal year 1993. The proposed action is revised as follows: The proposed action may harvest timber on as many as 1500 acres and build about five miles of access road beginning in fiscal year 1994. This change is a result of using partial cut silvicultural prescriptions. The original calculation of 450 acres was based on a clearcut silvicultural prescription.

The draft EIS (originally planned to be available for public review in January 1992) is expected to be available for review in December 1992. The final EIS will be published in May 1993.

FOR FURTHER INFORMATION CONTACT: Questions and comments about this EIS should be directed to Jack Gerstkemper, Estacada Ranger District, Estacada, Oregon 97023, phone (503) 630-6861.

Dated: July 1, 1992.

Michael S. Edrington,

Forest Supervisor.

[FR Doc. 92-17229 Filed 7-21-92; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Action Affecting Export Privileges; Frederick Components International, Ltd.; Correction

In the **Federal Register** of Friday, May 29, 1992, the Bureau of Export Administration published an Order at 22709. This notice is being published to correct the subject matter of that order.

The subject heading should have appeared as set forth above.

Dated: July 9, 1992.

Iain S. Baird,

Director, Office of Export Licensing.

[FR Doc. 92-17179 Filed 7-21-92; 8:45 am]

BILLING CODE 3510-DT-M

Foreign-Trade Zones Board

[Order No. 589]

Relocation and Expansion of Foreign-Trade Zone 56, Oakland, CA; and Approval of Manufacturing Activity for Export Within Foreign-Trade Zone 56; Advanced Blending Corp. (Infant Formula)

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), and the Foreign-Trade Zones Board Regulations (15 CFR Part 400), the Foreign-Trade Zones Board (the Board) adopts the following Resolution and Order:

Whereas, the City of Oakland, California, Grantee of Foreign-Trade Zone No. 56, has made application (filed 5-9-91, FTZ Docket 27-91, 56 FR 22842, 5-17-91) to the Board for authority to relocate and expand its general-purpose zone in Oakland, California, adjacent to the San Francisco/Oakland customs port of entry;

Whereas, the application was amended on July 8, 1991, to include a request for authority on behalf of Advanced Blending Corporation to manufacture milk-based infant formula for export under zone procedures within FTZ 56 (56 FR 38112, 8-12-91);

Whereas, notices of said application and amendment have been given in the **Federal Register** and public comment has been invited;

Whereas, the Board has found that the requirements of the Act and the Board's regulations would be satisfied, and that the proposal, as amended, would be in the public interest provided that the manufacturing authority for Advanced Blending Corporation is limited to export activity, as indicated in the amended application, and that all foreign-origin dairy products and sugar admitted to the zone shall be reexported;

Now, Therefore, the Board hereby orders:

That the Grantee is authorized to relocate and expand its zone in accordance with the application filed on May 9, 1991, and Advanced Blending Corporation is authorized to manufacture infant formula under zone procedures for export within FTZ 56, as requested in the amendment of July 8, 1991, subject to the FTZ Act and the Board's regulations (as revised, 56 FR 50790-50808, 10-8-91), including § 400.28.

Signed at Washington, DC, this 15th day of July 1992.

Alan M. Dunn,

Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 92-17299 Filed 7-21-92; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of initiation of antidumping and countervailing duty administrative reviews.

SUMMARY: The Department of Commerce has received requests to conduct administrative reviews of various antidumping and countervailing duty orders, findings and suspension agreements with June anniversary dates. In accordance with the Commerce Regulations, we are initiating those administrative reviews.

EFFECTIVE DATE: July 22, 1992.

FOR FURTHER INFORMATION CONTACT: Roland L. MacDonald, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone (202) 377-2104.

SUPPLEMENTARY INFORMATION:

Background

The Department of Commerce ("the Department") has received timely requests, in accordance with §§ 353.22(a)(1) of the Department's regulations, for administrative reviews of various antidumping and countervailing duty orders, findings, and suspension agreements, with June anniversary dates.

Initiation of Reviews

In accordance with §§ 353.22(c) and 355.22(c) of the Department's regulations, we are initiating administrative reviews of the following antidumping and countervailing duty orders, findings, and suspension agreements. We intend to issue the final results of these reviews not later than June 30, 1993.

Antidumping duty proceedings and firms	Periods to be reviewed
Canada:	
Red Raspberries, A-122-401	
British Columbia Blueberry Cooperative Association, Clearbrook Packers, Inc., Mukhtiar & Sons Packers Ltd., Universal Packers Inc., Valley Berries Inc.	6/1/91-5/31/92
France:	
Large Power Transformers, A-427-030	
Jeumont-Schneider	6/1/91-5/31/92
Japan:	
Industrial Belts, A-588-807	
Mitsuboshi Belting Limited	6/1/91-5/31/92
Large Power Transformers, A-588-032	
Fuji	
Polyethylene Terephathalate Film Sheet and Strip, A-588-814, A-588-814	
Toray Industries, Inc.	11/30/90-5/31/92
Singapore	
Industrial Belts, A-559-802	
Mitsuboshi Belting (Singapore) Pte. Ltd.	6/1/91-5/31/92
The Hungarian People's Republic:	
Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, A-437-601	
Magyar Gordulocsapagy Muvek	6/1/91-5/31/92

Antidumping duty proceedings and firms	Periods to be reviewed
The People's Republic of China:	
Sparklers, A-570-804	
Guangxi Native Produce Import & Export Corporation, Beihai Fireworks and Firecracker Branch	12/17/90-5/31/92
Tapered Roller Bearings and Parts Thereof, A-570-601	
Harbin Bearing Factory, Luoyang Bearing Factory, Wafangdian Bearing Factory, Shanghai General Bearing Co., Ltd., Shanghai Rolling Bearing Factory, Xiangyang Bearing Factory, Chengdu General Bearing Factory, Hailin Bearing Factory, Guiyang Bearing Factory, Haihong Bearing Factory, Lanzhou Bearing Factory, Xibei Bearing Factory, Changzhi Bearing Factory, Jining Bearing Factory, Shenyang Bearing Factory, Gongzhuling Bearing Factory, Jiamusi Bearing Factory, Hangzhou Bearing Factory, Jiangxi Bearing Factory, Liangshan Bearing Factory, Yantai Bearing Factory, Northwest Bearing Plant, Huangshi Bearing Factory, Guangxi Bearing Factory, Chongqing Bearing Factory, Yunnan Bearing Factory, Baoji Bearing Factory, Xiangtan Bearing Factory, Shaoguan Bearing Factory, Xinjiang Bearing Factory, The Second Bearing Factory of Xuzhou, Yuxi Bearing Factory, Changde Bearing Factory, Chengdu Bearing Company, Handan Bearing Factory, Xingcheng Bearing Factory, Premier Bearing & Equipment, Ltd., Chin Jun Industrial, Ltd., China National Machinery and Equipment Import and Export Corporation, China National Machinery Import and Export Corporation of Jilin Province	6/1/91-5/31/92
The Republic of Korea:	
Polyethylene Terephthalate Film, Sheet and Strip, A-580-807	
SKF Limited, Cheil Synthetics Inc., Kolon Industries, Inc., STC Corporation	11/30/90-5/31/92

Countervailing Duty Proceedings

None.

In addition, in accordance with § 353.25 of the Commerce Regulations, the following firms have requested revocation from the antidumping duty order.

Canada

Red Raspberries
A-122-401
British Columbia Co-Operative Association, Clearbrook Packers Inc., Mukhtiar & Sons Packers Ltd.

Interested parties must submit applications for administrative protective orders in accordance with §§ 353.34(b) and § 355.34(b) of the Department's regulations.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930 (19 U.S.C. 1675(a)) and 19 CFR 353.22(c) and 355.22(c) (1989).

Dated: July 15, 1992.

Roland L. MacDonald.

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 92-17300 Filed 7-21-92; 8:45 am]

BILLING CODE 3510-DS-M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000-0078; FAR Case 88-63]

OMB Clearance Request for the Make-or-Buy Program

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000-0078).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning the Make-or-Buy Program.

FOR FURTHER INFORMATION CONTACT: Jeremy Olson, Office of Federal Acquisition Policy, GSA, (202) 501-3221.

SUPPLEMENTARY INFORMATION:

A. Purpose

Price, performance, and/or implementation of socioeconomic policies may be affected by make-or-buy decisions under certain Government prime contracts. Accordingly, Subpart, 15.7, Make-or-Buy Programs, of the FAR—

(i) Sets forth circumstances under which a Government contractor must submit for approval by the contracting officer a make-or-buy program, *i.e.*, a written plan identifying major items to be produced or work efforts to be performed in the prime contractor's facilities and those to be subcontracted;

(ii) Provides guidance to contracting officers concerning the review and approval of the make-or-buy programs; and

(iii) Prescribes the contract clause at FAR 52.215-21, Changes or Additions to Make-or-Buy Programs, which specifies the circumstances under which the contractor is required to submit for the contracting officer's advance approval a notification and justification of any proposed change in the approved make-or-buy program.

The information is used to assure the lowest overall cost to the Government for required supplies and services.

B. Annual Reporting Burden

The annual reporting burden is estimated as follows: Respondents, *200;* responses per respondent, *3;* total annual responses, *600;* preparation hours per response, *8;* and total response burden hours, *4,800.*

Obtaining Copies of Proposals: Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), room 4037, Washington, DC 20405, telephone (202) 501-4755. Please cite OMB Control No. 9000-0078, Make-or-Buy Program, FAR case 88-63, in all correspondence.

Dated: July 14, 1992.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 92-17189 Filed 7-21-92; 8:45 am]

BILLING CODE 6820-34-M

[OMB Control No. 9000-0023]

OMB Clearance Request for Balance of Payments Program Certificate

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000-0023), Balance of Payments Program Certificate.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44

U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning OMB Control Number 9000–0023, Balance of Payments Program Certificate.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, Office of Federal Acquisition Policy, GSA (202) 501–4755.

SUPPLEMENTARY INFORMATION:

Purpose

The offeror, in submitting the Balance of Payments Program Certificate, certifies that each end product or service, except the end products or services listed in the certificate, is a domestic end product or service and that components of unknown origin have been considered to have been mined, produced, or manufactured outside the United States.

Offers are evaluated by giving a certain preference to domestic end products or services over foreign end products or services in accordance with § 25.303(b) of the Federal Acquisition Regulation.

Annual Reporting Burden

The annual reporting burden is estimated as follows: *Respondents,* 1,243; *responses per respondent,* 5; *total annual responses,* 6,215; *preparation hours per response,* 1.67; and total response burden hours, 1,038.

Obtaining Copies of Proposals

Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), room 4037, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0023, Balance of Payments Program Certificate, in all correspondence.

Dated: July 14, 1992.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 92–17190 Filed 7–21–92; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF DEFENSE

Office of the Secretary

DoD Advisory Group on Electron Devices; Advisory Committee Meeting

SUMMARY: Working Group C (Mainly Opto-Electronics) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 9 a.m., Wednesday and Thursday, 5–6 August 1992.

ADDRESSES: The meeting will be held at MIT/Lincoln Laboratory, 135 South Road Facility, Bedford, MA 01730.

FOR FURTHER INFORMATION CONTACT: Gerald Weiss, AGED Secretariat, 2011 Crystal Drive, suite 307, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group C meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. This opto-electronic device area includes such programs as imaging devices, infrared detectors and lasers. The review will include details of classified defense programs throughout.

In accordance with section 10(d) of Public Law 92–463, as amended (5 U.S.C. App. II § 10(d) (1988)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1)(1988), and that accordingly, this meeting will be closed to the public.

Dated: July 16, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92–17187 Filed 7–21–92; 8:45 am]

BILLING CODE 3810–01–M

DoD Advisory Group on Electron Devices; Advisory Committee Meeting

SUMMARY: The DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 9 a.m., Tuesday, 4 August 1992.

ADDRESSES: The meeting will be held at Palisades Institute for Research Services, Inc., 2011 Crystal Drive, One Crystal Park, suite 307, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Becky Terry, AGED Secretariat, 2011 Crystal Drive, One Crystal Park, suite 307, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The AGED meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. The agenda for this meeting will include programs on Radiation Hardened Devices, Microwave Tubes, Displays and Lasers. The review will include details of classified defense programs throughout.

In accordance with section 10(d) of Public Law 92–463, as amended, (5 U.S.C. App. II 10(d) (1988)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly, this meeting will be closed to the public.

Dated: July 16, 1992.

L.M. Bynum,

Alternate, OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92–17186 Filed 7–21–92; 8:45 am]

BILLING CODE 3810–01–M

Corps of Engineers, Department of the Army

Regulatory Guidance Letters Issued by the Corps of Engineers

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice.

SUMMARY: The purpose of this notice is to provide a copy of the latest Regulatory Guidance Letter (RGL) to all known interested parties. RGL's are used by the Corps of Engineers as a means to transmit guidance on the permit program (33 CFR parts 320–330) to its division and district engineers.

FOR FURTHER INFORMATION CONTACT: Mr. Sam Collinson, Regulatory Branch, Office of the Chief of Engineers at (202) 272–1782.

SUPPLEMENTARY INFORMATION: In accordance with a notice published by the Corps of Engineers on January 22, 1991, (56 FR 2408), we will publish all RGL's upon issuance. Accordingly, RGL No. 92–2, subject: Water Dependency and Cranberry Production, is hereby published. This guidance was developed jointly by the Corps of Engineers and the U.S. Environmental Protection Agency.

Dated: July 13, 1992.

John P. Elmore, P.E.,

Chief, Operations, Construction and Readiness Division, Directorate of Civil Works.

Subject: Water Dependency and Cranberry Production

1. Enclosed for implementation is a joint Army Corps of Engineers/Environmental Protection Agency Memorandum to the Field on water dependency and cranberry production. This guidance was developed jointly by the Army Corps of Engineers and the U.S. Environmental Protection Agency.

2. This guidance will expire 31 December 1995 unless sooner revised or rescinded.

For the Director of Civil Works:

John P. Elmore, P.E.,

Chief, Operations, Construction and Readiness Division, Directorate of Civil Works.

Memorandum to the Field

Subject: Water Dependency and Cranberry Production

1. The purpose of this memorandum is to clarify the applicability of the Section 404(b)(1) Guidelines water dependency provisions (40 CFR 230.10(a)) to the cultivation of cranberries, in light of Army Corps of Engineers (Corps) regulations at 33 CFR 323.4(a)(1)(iii)(C)(1) (ii) and (iii), and Environmental Protection Agency (EPA) regulations at 40 CFR 232.3(d)(3)(i) (B) and (C). These sections of the Corps and EPA regulations state, among other things, that cranberries are a wetland crop, and that some discharges associated with cranberry production are considered exempt from regulation under the provisions of section 404(f) of the Clean Water Act. The characterization of cranberries as a wetland crop has led to inconsistency in determining if cranberry production is a water dependent activity as defined in the section 404(b)(1) Guidelines (Guidelines).

2. The intent of Corps regulations at 33 CFR 320.4(b) and of the Guidelines is to avoid the unnecessary destruction or alteration of waters of the U.S., including wetlands, and to compensate for the unavoidable loss of such waters. The Guidelines specifically require that "no discharge of dredged or fill material shall be permitted if there is a practicable alternative to the proposed discharge which would have less adverse impact on the aquatic ecosystem, so long as the alternative does not have other significant adverse environmental consequences" (see 40 CFR 230.10(a)). Based on this provision, an evaluation is required in every case for use of non-aquatic areas and other aquatic sites that would result in less adverse impact to the aquatic ecosystem, irrespective of whether the discharge site is a special aquatic site or whether the activity associated with the discharge is water dependent. A permit cannot be issued, therefore, in circumstances where an environmentally preferable practicable alternative for the proposed discharge exists (except as provided for under section 404(b)(2)).

3. For proposed discharges into wetlands and other "special aquatic sites," the Guidelines alternatives analysis requirement further considers whether the activity associated with the proposed discharge is "water dependent". The Guidelines define water dependency in terms of an activity requiring access or proximity to or siting within a special aquatic site to fulfill its basic project purpose. Special aquatic sites (as defined in 40 CFR 230.40–230.45) are: (1) Sanctuaries and refuges; (2) wetlands; (3) mud flats; (4) vegetated shallows; (5) coral reefs; and (6) riffle and pool complexes. If an activity is determined not to be water dependent, the Guidelines establish the following two presumptions (40 CFR 230.10(a)(3)) that the applicant is required to rebut before satisfying the alternatives analysis requirements:

a. That practicable alternatives that do not involve special aquatic sites are presumed to be available; and,

b. That all practicable alternatives to the proposed discharge which do not involve a discharge into a special aquatic site are presumed to have less adverse impact on the aquatic ecosystem.

It is the responsibility of the applicant to clearly rebut these presumptions in order to demonstrate compliance with the Guidelines alternatives test.

4. If an activity is determined to be water dependent, the rebuttable presumptions stated in paragraph 3 of this memorandum do not apply. However, the proposed discharge, whether or not it is associated with a water dependent activity, must represent the least environmentally damaging practicable alternative in order to comply with the alternatives analysis requirement of the Guidelines as described in paragraph 2 of this memorandum.

5. As previously indicated, Corps and EPA regulations consider cranberries as a wetland crop species. This characterization of cranberries as a wetland crop species is based primarily on the listing of cranberries as an obligate hydrophyte in the National List of Plant Species That Occur in Wetlands (U.S. Fish and Wildlife Service Biological Report 88(26.1–26.13)) and the fact that cranberries must be grown in wetlands or areas altered to create a wetland environment. Therefore, the Corps and EPA consider the construction of cranberry beds, including associated dikes and water control structures associated with dikes (i.e., headgates, weirs, drop inlet structures), to be a water dependent activity. Consequently, discharges directly associated with cranberry bed construction are not subject to the presumptions applicable to non-water dependent activities discussed in paragraph 3 of this memorandum. However, consistent with the requirements of § 230.10(a), the proposed discharge must represent the least environmentally damaging practicable alternative, after considering aquatic and non-aquatic alternatives as appropriate. To be considered practicable, an alternative must be available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes. For commercial cranberry cultivation, practicable alternatives may include upland sites with proper characteristics for creating the necessary conditions to grow cranberries. Factors that must be considered in making a determination of whether or not upland alternatives are practicable include soil pH, topography, soil permeability, depth to bedrock, depth to seasonal high water table, adjacent land uses, water supply, and, for expansion of existing cranberry operations, proximity to existing cranberry farms. EPA Regions and Corps Districts are encouraged to work together with local cranberry growers to refine these factors to reflect their regional conditions.

6. In contrast, the following activities often associated with the cultivation and harvesting of cranberries are not considered water dependent: construction of roads, ditches, reservoirs, and pump houses that are used during the cultivation of cranberries, and construction of secondary support facilities for shipping, storage, packaging, parking, etc. Therefore, the rebuttable practicable alternatives presumptions discussed in paragraph 3 of this memorandum apply to the discharges associated with these non-water dependent activities. However, since determinations of practicability under the Guidelines includes consideration of cost, technical, and logistics factors, determining the availability of practicable alternatives to discharges associated with these non-water dependent activities must involve consideration of the need of an alternative to be proximate to the cranberry bed in order to achieve the basic project purpose of cranberry cultivation. Once it has been determined that the location of the cranberry bed, including associated dikes, and water control structures, represents the least environmentally damaging practicable alternative, practicable alternatives for maintenance roads, ditches, reservoirs and pump houses will generally be limited to the bed itself and the area in the vicinity of the actual bed. For example, the bed dikes may be the only practicable alternative for location of maintenance roads. When practicable alternatives cannot be identified within such geographic constraints, the applicant must minimize the impacts of the roads, reservoirs, etc., to the maximum extent practicable.

7. During review of applications for discharges associated with cranberry cultivation, it is important to reiterate that proposed discharges must also comply with the other requirements of the Guidelines (i.e., 40 CFR 230.10 (b), (c) and (d)). In addition, evaluations of all discharges, whether or not the proposed discharge is associated with a water dependent activity, must comply with the provisions of the National Environmental Policy Act, including an investigation of alternatives to the proposed discharge. Further, applications for discharges associated with cranberry cultivation will continue to be evaluated in accordance with current Corps and EPA policy and practice concerning mitigation, cumulative impact analysis, and public interest review factors.

8. This guidance expires 31 December 1995 unless sooner revised or rescinded.

For the Director of Civil Works:

Robert H. Wayland, III,
Director, Office of Wetlands, Oceans, and Watersheds, U.S. Environmental Protection Agency.

John P. Elmore,
Chief, Operations, Construction and Readiness Division, Directorate of Civil Works.

[FR Doc. 92-17226 Filed 7-21-92; 8:45 am]
BILLING CODE 3710-08-M

DEPARTMENT OF ENERGY

Office of Fossil Energy

[FE Docket No. 92-44-NG]

Coastal Gas Marketing Co.; Order Granting Blanket Authorization To Import and Export Natural Gas, Including Liquefied Natural Gas

AGENCY: Office of Fossil Energy, DOE.
ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Coastal Gas Marketing Company blanket authorization to import up to 600 Bcf and to export up to 150 Bcf of natural gas, including liquefied natural gas from and to Canada, Mexico, and other countries over a two-year period beginning on the date of first delivery after July 11, 1992.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, July 15, 1992
Charles F. Vacek,
Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92-17275 Filed 7-21-92; 8:45 am]
BILLING CODE 6450-01-M

[FE Docket No. 92-76-NG]

Louis Dreyfus Energy Corp.; Application for Blanket Authorization To Import and Export Natural Gas and Vacate Existing Authorization

AGENCY: Office of Fossil Energy, DOE.
ACTION: Notice of application.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt of June 22, 1992, of an application filed by Louis Dreyfus Energy Corp. (L.D. Energy) to (i) import up to 182.5 Bcf of natural gas from Canada for sales to markets in the United States during a two-year period commencing on the date of first delivery, and (ii) export up to 182.5 Bcf of natural gas from the United States for sales to markets in Mexico and Canada during a two-year period commencing on the date of first delivery. The proposed imports and exports would take place at any point on the international border where existing pipeline facilities are located. L.D. Energy further requests that its existing blanket export authorization granted in DOE/FE Opinion and Order No. 409 on July 13, 1990, be vacated upon approval of the requested import/export authorization.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., eastern time, August 21, 1992.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-056, FE-50, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Peter Lagiovane, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-056, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-8116.
Diane Stubbs, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E-042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6667.

SUPPLEMENTARY INFORMATION: L.D. Energy is a close corporation, organized and existing under the laws of Delaware, with its principal place of business in Wilton, Connecticut. L.D. Energy is a wholly-owned subsidiary of Louis Dreyfus Corporation, which, in turn, is a subsidiary of Louis Dreyfus Holding Company Inc., a Delaware corporation, whose parent is S.A. Louis Dreyfus & Cie of Paris, France, a family-owned concern. L.D. Energy is involved in marketing crude oil and refined products as well as the construction, chartering, and operation of liquefied natural gas tankers.

L.D. Energy requests authorization to import and export natural gas for its own account and as agent for the accounts of U.S. suppliers and purchasers and Mexican and Canadian suppliers and purchasers. The gas will be sold on a short-term basis, to commercial and industrial end-users, local distribution companies, and pipelines in the U.S. and Mexico. The applicant anticipates sales of gas exported to Mexico will be made principally to Petroleos Mexicanos. L.D. Energy requests that import and export authority be granted on a blanket basis to provide it with the flexibility necessary to respond to rapidly changing conditions in the natural gas markets in the United States, Mexico, and Canada. The exported gas would come from production areas in the United States with surplus supplies of natural gas or would consist of supplies which are incremental to the needs of current purchasers. The imported gas would be purchased from various Canadian suppliers including producers, marketers, and pipelines. No contracts for the sale of the proposed imports or exports have been executed, however, the specific details of each export transaction would be filed by L.D. Energy as per DOE's quarterly reporting requirements. L.D. Energy anticipates all sales would result from arms-length negotiations and the prices would be determined by market conditions.

L.D. Energy currently holds a blanket authorization to import up to 50 Bcf of natural gas from Canada that was granted on July 13, 1990, in DOE/FE Opinion and Order No. 409. Since L.D. Energy has not imported any natural gas under this authorization, the two-year import authorization period has not expired. L.D. Energy intends for the authorization requested in its current application to supersede the authorization contained in Order 409 and therefore requests that Order 409 be vacated upon issuance of its requested, two-year, natural gas import/export authorization of 182.5 Bcf.

The decision on the application for import authority will be made consistent with DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the market served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). In reviewing natural gas export applications, DOE considers the domestic need for the gas to be exported and any other issues determined to be appropriate, including whether the arrangement is consistent with the DOE policy of promoting competition in the

natural gas marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties that may oppose the application should comment in their responses on these issues.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have their written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the address listed above.

It is intended that a decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trail-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of L.D. Energy's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on July 16, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92–17276 Filed 7–21–92; 8:45 am]

BILLING CODE 6450–01–M

[FE Docket No. 92–77–NG]

Louis Dreyfus Natural Gas Corp.; Application for Blanket Authorization To Import and Export Natural Gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on June 22, 1992, of an application filed by Louis Dreyfus Natural Gas Corp. (L.D. Natural Gas) to (i) import up to 182.5 Bcf of natural gas from Canada for sales to markets in the United States and for reexportation to Canada during a two-year period commencing on the date of first delivery, and (ii) export up to 182.5 Bcf of natural gas from the United States for sales to markets in Mexico and Canada during a two-year period commencing on the date of first delivery. The proposed imports would take place at any point on the international border where existing pipeline facilities are located. L.D. Natural Gas would file quarterly reports detailing any transactions.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., eastern time, August 21, 1992.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–056, FE–50 1000 Independence Avenue, SW. Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Peter Lagiovane, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F–056, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–8116.

Diane Stubbs Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6667.

SUPPLEMENTARY INFORMATION: L.D. Natural Gas is a wholly subsidiary of Louis Dreyfus Holding Company Inc., a Delaware corporation with its principal place of business in Oklahoma City, Oklahoma. L.D. Natural Gas, whose parent is S.A. Louis Dreyfus & Cie of Paris, France, a family-owned concern, is currently involved in various aspects of production, sales and marketing of natural gas to various commercial and industrial end-users, local distribution companies and pipelines in the United States and Canada.

L.D. Natural Gas requests authorization to import and export natural gas for its own account and as agent for the accounts of U.S. suppliers and purchasers and Mexican and Canadian suppliers and purchasers. L.D. Natural Gas further requests that such import and export authority be granted on a blanket basis to provide it with the flexibility necessary to respond to rapidly changing conditions in the natural gas markets in the United States, Mexico, and Canada. The exported gas would come from production areas in the United States with surplus supplies of natural gas or would consist of supplies which are incremental to the needs of current purchasers. The imported gas would be purchased from various Canadian suppliers including producers, marketers, and pipelines. No contracts for the sale of the proposed imports or exports have been executed, however, the specific details of each import and export transaction would be filed by L.D. Natural Gas as per DOE's quarterly reporting requirements. L.D. Natural Gas anticipates all sales would result from arms-length negotiations and the prices would be determined by market conditions.

The decision on the application for import authority will be made consistent with DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the market served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). In reviewing natural gas export applications, DOE considers the domestic need for the gas to be exported and any other issues determined to be appropriate, including whether the arrangement is consistent with the DOE policy of promoting competition in the natural gas marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties that may oppose the application should comment in their responses on these issues.

NEPA Compliance. The Natural Environmental Policy Act (NEPA) 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures. In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have their written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intevention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the address listed above.

It is intended that a decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of L.D. Natural Gas's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on July 16, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92–17277 Filed 7–21–92; 8:45 am]

BILLING CODE 6450–01–M

[FE Docket No. 91–103–LNG]

Phillips Alaska Natural Gas Corp. and Marathon Oil Company; Order Amending Existing Authorization To Export Liquefied Natural Gas to Japan

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order amending the authorization of Phillips Alaska Natural Gas Corporation and Marathon Oil Company to increase by twelve percent the volume of liquefied natural gas the applicants are authorized to export from Alaska to Japan beginning April 1, 1993, through March 31, 2004.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, July 15, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92–17278 Filed 7–21–92; 8:45 am]

BILLING CODE 6450–01–M

Western Area Power Administration

Floodplain/Wetlands Involvement for the Sterling Substation Transformer and Fuse Replacement Project, Logan County, CO

AGENCY: Western Area Power Administration, DOE.

ACTION: Floodplain/wetland involvement and opportunity to comment.

SUMMARY: The Department of Energy, Western Area Power Administration (Western), is proposing to remove and replace a transformer and transformer fuses, and provide oil spill containment for all oil-filled equipment at the Sterling Substation near Sterling, Colorado, in Logan County. Because the substation is within the floodplain of the South Platte River, Western will prepare a Floodplain/Westlands Assessment.

DATES: Public comments or suggestions concerning the floodplain involvement of Western's proposed actions are invited. Comments are due within 15 days after the date of publication of this notice in the Federal Register.

ADDRESSES: Comments or suggestions should be sent to: Mr. Robert H. Jones, Acting Area Manager, Loveland Area Office, Western Area Power Administration, P.O. Box 3700, Loveland, CO 80539, (303) 490–7200.

FOR FURTHER INFORMATION CONTACT: Rodney D. Jones, Environmental Specialist, Loveland Area Office, Western Area Power Administration, P.O. Box 3700, Loveland, CO 80539, (303) 490–7371.

SUPPLEMENTARY INFORMATION: Pursuant to DOE's "Compliance with Floodplain/Wetlands Environmental Review Requirements," 10 CFR part 1022, Western has determined this proposed project may involve activities within a floodplain area. Western will prepare a floodplain/wetlands assessment in accordance with Executive Order 11988, Floodplain Management, and Executive Order 11990, Protection of Wetlands. The assessment will address the

proposed activity in the South Platte River floodplain.

Removing and replacing the Sterling Substation transformer has become necessary due to the age of the existing transformer and the unavailability of replacement parts. These factors have made maintaining this transformer increasingly difficult. The new transformer would require less maintenance time and increase reliability by reducing the risk of potential failure. The existing transformer and foundation would be removed and a new transformer with a new concrete foundation installed. The 69 kilovolt (kV) fuses would be replaced with a three-phase interrupter to prevent single-phase conditions. Single-phase operation has caused severe low voltages to customers in the area. In addition, three instrument transformers would be replaced and one circuit breaker would be removed.

Based on U.S. Geological Survey topographic maps and Federal Emergency Management Agency (FEMA) maps, the existing substation lies within the known boundaries of the 100-year floodplain of the South Platte River. All construction activity associated with the project would take place within the 10-acre fenced boundary of the substation facility. Oil spill containment for all oil-filled equipment would be installed at the substation. Oil spill containment design will consider potential oil spill impacts to the South Platte River and floodplain.

Issued at Golden, Colorado, July 10, 1992.

William H. Clagett,

Administrator.

[FR Doc. 92-17279 Filed 7-21-92; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-300224A; FRL-4070-2]

Abandoned and Incomplete Pesticide Petitions That are Being Withdrawn

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; Withdrawn Petitions.

SUMMARY: This notice announces the withdrawal without prejudice to future filings of certain pesticide petitions for tolerances or food or feed additive petitions that have been pending with the Agency.

ADDRESSES: By mail, submit written comments to: Public Docket and Freedom of Information Section, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to: Rm. 246, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: By mail, James A. Tompkins, Registration Support Branch, Registration Division (H7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 724A, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-7700.

SUPPLEMENTARY INFORMATION: In the Federal Register of September 4, 1991 (56 FR 43759), EPA issued a notice which announced certain policies concerning abandoned and incomplete pesticide petitions for tolerances and food or feed additive petitions (FAP's) currently pending with the Agency. In response to the notice, certain registrants have requested the Agency to withdraw their pesticide petitions or food or feed additive petitions without prejudice to future filings. Accordingly, the petitions listed in the tables below have been withdrawn by the Agency on the dates indicated.

List of Petitions Withdrawn per Correspondence Received

Petition	Chemical	Petitioner	Crop	Date
1F1074	Dichlopbenil	Thompson-Hayward	Fish	12-02-91
2G1241	Methomyl	E. I. du Pont	Pineapple et al.	09-17-91
3F1417	Dacthal	Diamond Shamrock	RACs	11-18-91
5F1554	Oxadiazon	Rhodia, Inc.	Soybeans et al.	09-09-91
5F1647	Glyoxime	Ciba-Geigy	Oranges	11-08-91
6F1702	Fensulfothion	Mobay Chemical	Beans et al.	11-15-91
6F1716	Asulam	Rhodia, Inc.	Alfalfa forage et al.	09-13-91
6F1717	Asulam	Rhodia, Inc.	Grasses et al.	09-13-91
6F1766	Asulam	Rhodia, Inc.	Flaxseed et al.	09-13-91
6F1810	Benomyl	E.I. du Pont	Lettuce	11-15-91
6F1814	Propargite	Uniroyal Chemical	Almonds	12-02-91
8F2043	Aldoxycarb	Union Carbide	Cottonseed	11-11-91
8F2077	Oxadiazon	Rhodia, Inc.	Almonds et al.	09-09-91
8F2096	Aldicarb	Union Carbide	Tomatoes	11-15-91
8F2117	Oxamyl	E.I. du Pont	Field corn	10-18-91
9F2186	Aldoxycarb	Union Carbide	Peanuts et al.	11-11-91
9G2227	1-12-(2,4-D)	Ciba-Geigy	Apples et al.	09-24-91
0E2276	Methomyl	IR-4	Forage grasses et al.	10-04-91
0F2316	Oxamyl	E.I. du Pont	Beans	10-18-91
0G2318	Aldicarb	Union Carbide	Grapes	11-11-91
0G2342	Ethephon	GAF Corp.	Cottonseeds	11-01-91
0E2393	Triadimefon	Mobay Chemical	Cucumbers et al.	01-28-92
0F2405	Chlorothalonil	Diamond Shamrock	Oranges	11-18-91
0F2416	Metolachlor	Ciba-Geigy	Sunflowers	10-16-91
0E2419	DCNA	IR-4	Tomatoes	10-04-91
1F2436	Bromopropylate	Ciba-Geigy	Citrus fruit et al.	10-01-91
1E2445	Propachlor	IR-4	Onions	10-04-91
1E2486	Linuron	IR-4	Lettuce	10-14-91
1G2489	Fenvalerate	Shell Chemical	Sorghum grain	11-15-91
1F2553	Bendiocarb	BFC Chemicals	Corn	09-23-91
1G2558	Bendiocarb	BFC Chemicals	Range grass	09-23-91
2F2597	Aldicarb	Union Carbide	Grapes	11-11-91
2E2649	Fenvalerate	IR-4	Trefoil	10-04-91
2F2657	Fenvalerate	Shell Chemical	Raisins et al.	11-15-91
2G2660	Chlorothalonil	Diamond Shamrock	Apples	11-18-91
2F2679	Aldicarb	Union Carbide	Field grain	11-11-91
2F2700	Etridiazole	Olin Chemical	Peanuts	11-27-91

List of Petitions Withdrawn per Correspondence Received—Continued

Petition	Chemical	Petitioner	Crop	Date
2F2705	Amitraz	Upjohn Chemical	Pears	09-23-91
2E2714	Methomyl	IR-4	Sugarcane	10-04-91
2E2735	Simazine	IR-4	Rhubarb	10-04-91
2F2737	Dimethipin	Uniroyal Chemical	Potatoes	12-02-91
2G2740	Amitraz	BFC Chemicals	Apples	09-23-91
2G2750	Amitraz	Upjohn Chemical	Apples	09-23-91
2G2755	Metolachlor	Ciba-Geigy	Peanuts	10-16-91
3F2768	Phosalone	Rhone Poulenc	Almonds	11-15-91
3F2806	Flucythrinate	American Cyanamid	Apples	11-15-91
3F2815	Chlorothalonil	Diamond Shamrock	Peaches	11-18-91
3F2825	Cypermethrin	FMC	Tomatoes	11-18-91
3E2836	Nuarimol	Elanco	Bananas	12-03-91
3E2867	Acephate	Chevron Chemical	Grapes	11-15-91
3F2870	Atrazine	Ciba-Geigy	Range grass hay	11-08-91
3E2881	MCPB	IR-4	Mint hay	10-04-91
3F2894	Aldoxycarb	Union Carbide	Cantaloupe et al.	11-11-91
3G2902	Amitraz	BFC Chemicals	Grapes	09-23-91
3E2928	Oxamyl	IR-4	Grapes	10-04-91
4F2970	Oxamyl	E.I. du Pont	Lettuce et al.	10-18-91
4E2982	2,4-DB	IR-4	Oats et al.	10-04-91
4F2984	Sorprophor	Rhone Poulenc	Cotton	11-15-91
4F2992	Oxamyl	E. I. du Pont	Cabbage	10-18-91
4F3000	Metolachlor	Ciba-Geigy	Apples	10-16-91
4G3015	Lactofen	PPG	Peanuts et al.	11-15-91
4F3022	Fenvalerate	Shell Chemical	Citrus fruits et al.	11-15-91
4F3025	Chlorothalonil	SDS Biotech	Apples	11-18-91
4F3030	Fenvalerate	Shell Chemical	Brussels sprouts	11-15-91
4E3056	Etridiazole	IR-4	Peppers	10-04-91
4E3058	Thiophanate methyl	IR-4	Cabbage et al.	10-04-91
4E3059	Etridiazole	IR-4	Cabbage et al.	10-04-91
4F3071	Aldoxycarb	Union Carbide	Sweet potatoes et al.	11-11-91
4E3078	Fenvalerate	IR-4	Asparagus	10-04-91
4E3084	Ethoprop	IR-4	Lettuce	11-15-91
4F3095	Ethalfluralin	Elanco	Beans et al.	12-03-91
4G3107	Fenpropathrin	Chevron Chemical	Cottonseed	11-15-91
4E3140	Simazine	IR-4	Pistachios	10-04-91
5F3187	Aldoxycarb	Union Carbide	Beans et al.	11-11-91
5H5105	Acephate	Chevron	Tomato pomace	11-15-91
8H5178	Aldoxycarb	Union Carbide	Cottonseed	11-11-91
9H5228	Triazole	Ciba-Geigy	Prunes	09-24-91
0H5243	Oxycarboxin	Uniroyal Chemical	Coffee	12-02-91
0H5250	Ethephon	Union Carbide	Cottonseed	11-01-91
0H5272	Chlorothalonil	Diamond Shamrock	Citrus oil	11-18-91
1H5279	Bromopropylate	Ciba-Geigy	Citrus pulp et al.	10-01-91
1H5294	Metolachlor	Ciba-Geigy	Sunflower meal et al.	10-16-91
2H5327	Aldicarb	Union Carbide	Grapes	11-11-91
2H5340	Fenvalerate	Shell Chemical	Grape pomace	11-15-91
2H5347	Aldicarb	Union Carbide	Tomato pomace	11-11-91
2H5353	Amitraz	BFC Chemicals	Citrus pulp	09-23-91
2H5366	Amitraz	BFC Chemicals	Dry apple pomace	09-23-91
2H5368	Bendiocarb	BFC Chemicals	Corn oil	09-23-91
2H5376	Amitraz	Ciba-Geigy	Citrus molasses	09-23-91
3H5380	Acephate	Chevron Chemical	Potato waste	11-15-91
3H5381	Flucythrinate	American Cyanamid	Apple pomace	11-15-91
3H5390	Malathion	American Cyanamid	Tea leaves	11-18-91
4H5424	Fenvalerate	E. I. du Pont	Citrus fruit	11-15-91
4H5438	Oxamyl	IR-4	Raisins et al.	10-04-91
5H5458	Baytan	Mobay	Wheat and grapes	11-18-91

The petitions listed in the table above are hereby withdrawn without prejudice to future filings.

Authority: 7 U.S.C. 136a.

Dated: July 1, 1992.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Program.

[FR Doc. 92–17139 Filed 7–21–92; 8:45 am]

BILLING CODE 6560–50–F

[OPP–50746; FRL–4076–7]

Receipt of a Notification to Conduct Small-Scale Field Testing; Nonindigenous Microbial Pesticide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received from E.I. duPont deNemours and Company, Inc., of Wilmington, Delaware, a notification of intent to conduct small-scale field tests involving the nonindigenous *Bacillus thuringiensis* (Bt) strain II - 808. Dupont intends to test the pesticide on a variety of unspecified vegetable and field crops in California, Delaware, Florida, Illinois, Mississippi, and Texas against unspecified coleopterous and lepidopterous pests.

DATES: Written comments must be received on or before August 5, 1992.

ADDRESSES: Comments, in triplicate, should bear the docket control number OPP–50744 and be submitted to: Public Response and Program Resources Branch, Field Operations Division (H7506C), Office of Pesticide Programs,

Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 1128, Crystal Mall #2, 1921 Jefferson Davis Highway, Crystal City, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. Written comments will be available for public inspection in Rm. 1128 at the address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Phillip O. Hutton, Product Manager (PM) 18, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 213, Crystal Mall #2, 1921 Jefferson Davis Highway, Crystal City, VA, (703) 305–7690.

SUPPLEMENTARY INFORMATION: A notification of intent to conduct small-scale field testing pursuant to EPA's Statement of Policy entitled, "Microbial Products Subject to the Federal Insecticide, Fungicide, and Rodenticide Act and the Toxic Substances Control Act," published in the **Federal Register** of June 26, 1986 (51 FR 23313), has been received from E.I. duPont deNemours and Company, Inc. of Wilmington, Delaware. The purpose of the proposed testing is to evaluate the efficacy of the nonindigenous *Bacillus thuringiensis* strain towards lepidopterous and coleopterous insect pests of vegetable and field crops. The field tests are to take place in California, Delaware, Florida, Illinois, Mississippi, and Texas for a maximum combined treated acreage of 6 acres over a 3–year period. All treated crops will be destroyed.

Following the review of E.I. duPont deNemours and Company, Inc.'s application and any comments received in response to this Notice, EPA will decide whether or not an experimental use permit is required.

Dated: July 14, 1992.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 92–17283 Filed 7–21–92; 8:45 am]

BILLING CODE 6560–50–F

[OPP–50747; FRL–4076–8]

Receipt of a Notification to Conduct Small-Scale Field Testing; Nonindigenous Microbial Pesticide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received from Novo Nordisk A/S, of Denmark, a notification of intent to conduct small-scale field tests involving the nonindigenous *Bacillus thuringiensis* (Bt) strain NB357. Novo intends to test the pesticide on alfalfa, cole, cotton, sugar beets, sweet corn, and tomatoes in Alabama, California, Florida, Louisiana, and North Carolina. The target pests for these field trials are beet armyworms, corn earworms, and fall armyworms.

DATES: Written comments must be received on or before August 5, 1992.

ADDRESSES: Comments, in triplicate, should bear the docket control number OPP–50747 and be submitted to: Public Response and Program Resources Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 1128, Crystal Mall #2, 1921 Jefferson Davis Highway, Crystal City, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. Written comments will be available for public inspection in Rm. 1128 at the address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Phillip O. Hutton, Product Manager (PM) 18, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 213, Crystal Mall #2, 1921 Jefferson Davis Highway, Crystal City, VA, (703) 305–7690.

SUPPLEMENTARY INFORMATION: A notification of intent to conduct small-scale field testing pursuant to EPA's Statement of Policy entitled, "Microbial Products Subject to the Federal Insecticide, Fungicide, and Rodenticide Act and the Toxic Substances Control Act," published in the **Federal Register** of June 26, 1986 (51 FR 23313), has been received from Novo Nordisk A/S of Denmark. The purpose of the proposed testing is to evaluate the efficacy of the nonindigenous *Bacillus thuringiensis* strain under field conditions on alfalfa, cole, cotton, sugar beets, sweet corn, and tomatoes in Alabama, California, Florida, Louisiana, and North Carolina. The target pests for these field trials are beet armyworms, corn earworms, and fall armyworms. Testing will take place over a 3 1/2 year period on a combined maximum treated acreage of 8.4 acres per year. All treated crops will be destroyed.

Following the review of Novo Nordisk's application and any comments received in response to this Notice, EPA will decide whether or not an experimental use permit is required.

Dated: July 14, 1992.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 92–17284 Filed 7–21–92; 8:45 am]

BILLING CODE 6560–50–F

[OPP–60038; FRL–4079–3]

Intent to Suspend Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of issuance of notices of intent to suspend.

SUMMARY: This Notice, pursuant to section 6(f)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 et seq., announces that EPA has issued Notices of Intent to Suspend pursuant to sections 3(c)(2)(B) and 4 of FIFRA. The Notices were issued following issuance of Section 4 Reregistration Requirements Notices by the Agency and the failure of registrants subject to the Section 4 Reregistration Requirements Notices to take appropriate steps to secure the data required to be submitted to the Agency. This Notice includes the text of a Notice of Intent to Suspend, absent specific chemical, product, or factual information. Table A of this Notice further identifies the registrants to whom the Notices of Intent to Suspend were issued, the date each Notice of Intent to Suspend was issued, the active ingredient(s) involved, and the EPA registration numbers and names of the registered product(s) which are affected by the Notices of Intent to Suspend.

Moreover, Table B of this Notice identifies the basis upon which the Notices of Intent to Suspend were issued. Finally, matters pertaining to the timing of requests for hearing are specified in the Notices of Intent to Suspend and are governed by the deadlines specified in section 3(c)(2)(B). As required by section 6(f)(2), the Notices of Intent to Suspend were sent by certified mail, return receipt requested, to each affected registrant at its address of record.

FOR FURTHER INFORMATION CONTACT: Stephen L. Brozena, Office of Compliance Monitoring (EN–342), Laboratory Data Integrity Assurance Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, (703) 308–8267.

SUPPLEMENTARY INFORMATION:

I. Text of a Notice of Intent to Suspend

The text of a Notice of Intent to Suspend, absent specific chemical, product, or factual information, follows:

United States Environmental Protection Agency

Office of Prevention, Pesticides and Toxic Substances

Washington, DC 20460

Certified Mail

Return Receipt Requested

SUBJECT: Suspension of Registration of Pesticide Product(s) Containing _____ for Failure to Comply with the Section 4 Reregistration Requirements Notice for _____ Dated _____.

Dear Sir/Madam:

This letter gives you notice that the pesticide product registrations listed in Attachment I will be suspended 30 days from your receipt of this letter unless you take steps within that time to prevent this Notice from automatically becoming a final and effective order of suspension. The Agency's authority for suspending the registrations of your products is sections 3(c)(2)(B) and 4(d)(6) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Upon becoming a final and effective order of suspension, any violation of the order will be an unlawful act under section 12(a)(2)(J) of FIFRA.

You are receiving this Notice of Intent to Suspend because you have failed to comply with the terms of the Phase 2 Data Requirements for Reregistration Notice imposed pursuant to Section 4 of FIFRA. Section 4(d)(6) provides that the Administrator "shall issue a Notice of Intent to Suspend the registration of a pesticide in accordance with the procedures prescribed by section 3(c)(2)(B)(iv) if the Administrator determines that (A) progress is insufficient to ensure submission of the data required for such pesticide under a commitment made under paragraph (3)(B) within the time period prescribed by paragraph (4)(B) or (B) the registrant has not submitted such data to the Administrator within such time period."

The specific basis for issuance of this Notice is stated in the Explanatory Appendix (Attachment III) to this Notice. Affected products and the requirements which you failed to satisfy are listed and described in the following three attachments:

Attachment I Suspension Report - Product List

Attachment II Suspension Report - Requirement List

Attachment III Suspension Report - Explanatory Appendix

The suspension of the registration of each product listed in Attachment I will become final unless at least one of the following actions is completed.

1. You may avoid suspension under this Notice if you or another person adversely affected by this Notice properly request a hearing within 30 days of your receipt of this Notice. If you request a hearing, it will be conducted in accordance with the requirements of section 6(d) of FIFRA and the Agency's procedural regulations in 40 CFR part 164.

Section 3(c)(2)(B), however, provides that the only allowable issues which may be addressed at the hearing are whether you have failed to take the actions which are the bases of this Notice and whether the Agency's decision regarding the disposition of existing stocks is consistent with FIFRA. Therefore, no substantive allegation or legal argument concerning other issues, including but not limited to the Agency's original decision to require the submission of data or other information, the need for or utility of any of the required data or other information or deadlines imposed, and the risks and benefits associated with continued registration of the affected product, may be considered in the proceeding. The Administrative Law Judge shall by order dismiss any objections which have no bearing on the allowable issues which may be considered in the proceeding.

Section 3(c)(2)(B)(iv) of FIFRA provides that any hearing must be held and a determination issued within 75 days after receipt of a hearing request. This 75–day period may not be extended unless all parties in the proceeding stipulate to such an extension. If a hearing is properly requested, the Agency will issue a final order at the conclusion of the hearing governing the suspension of your products.

A request for a hearing pursuant to this Notice must (1) include specific objections which pertain to the allowable issues which may be heard at the hearing, (2) identify the registrations for which a hearing is requested, and (3) set forth all necessary supporting facts pertaining to any of the objections which you have identified in your request for a hearing. If a hearing is requested by any person other than the registrant, that person must also state specifically why he asserts that he would be adversely affected by the suspension action described in this Notice. Three copies of the request must be submitted to: Hearing Clerk, A–110, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, and an additional copy should be sent to the signatory listed below. The request must be *received* by the Hearing Clerk by the 30th day from your receipt of this Notice in order to be legally effective. The 30–day time limit is established by FIFRA and cannot be extended for any reason. Failure to meet the 30–day time limit will result in automatic suspension of your registration(s) by operation of law and, under such circumstances, the suspension of the registration for your affected product(s) will be final and effective at the close of business 30 days after your receipt of this Notice and will not be subject to further administrative review.

The Agency's Rules of Practice at 40 CFR 164.7 forbid anyone who may take part in deciding this case, at any stage of the proceeding, from discussing the merits of the proceeding *ex parte* with any party or with any person who has been connected with the preparation or presentation of the proceeding as an advocate or in any investigative or expert capacity, or with any of their representatives. Accordingly, the following EPA offices, and the staffs thereof, are designated as judicial staff to perform the judicial function of EPA in any administrative hearings on this Notice of Intent to Suspend: The Office of the Administrative Law Judges, the Office of the Judicial Officer, the Administrator, the Deputy Administrator, and the members of the staff in the immediate offices of the Administrator and Deputy Administrator. None of the persons designated as the judicial staff shall have any *ex parte* communication with trial staff or any other interested person not employed by EPA on the merits of any of the issues involved in this proceeding, without fully complying with the applicable regulations.

2. You may also avoid suspension if, within 30 days of your receipt of this Notice, the Agency determines that you have taken appropriate steps to comply with the section 4 Data Requirements for Reregistration. In order tc avoid suspension under this option, you must satisfactorily comply with Attachment II, Requirement List, for each product by submitting all required supporting data/information described in Attachment II and in the Explanatory Appendix (Attachment III) to the following address (preferably by certified mail):

Office of Compliance Monitoring (EN-342), Laboratory Data Integrity Assurance Division, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

For you to avoid automatic suspension under this Notice, the Agency must also determine within the applicable 30-day period that you have satisfied the requirements that are the bases of this Notice and so notify you in writing. You should submit the necessary data/information as quickly as possible for there to be any chance the Agency will be able to make the necessary determination in time to avoid suspension of your product(s).

The suspension of the registration(s) of your company's product(s) pursuant to this Notice will be rescinded when the Agency determines you have complied fully with the requirements which were the bases of this Notice. Such compliance may only be achieved by submission of the data/information described in the attachments to the signatory below.

Your product will remain suspended, however, until the Agency determines you are in compliance with the requirements which are the bases of this Notice and so informs you in writing.

After the suspension becomes final and effective, the registrant subject to this Notice, including all supplemental registrants of product(s) listed in Attachment I, may not legally distribute, sell, use, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person, the product(s) listed in Attachment I.

Persons other than the registrant subject to this Notice, as defined in the preceding sentence, may continue to distribute, sell, use, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person, the product(s) listed in Attachment I.

Nothing in this Notice authorizes any person to distribute, sell, use, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person, the product(s) listed in Attachment I in any manner which would have been unlawful prior to the suspension.

If the registrations of your products listed in Attachment I are currently suspended as a result of failure to comply with another section 4 Data Requirements Notice or section 3(c)(2)(B) Data Call-In Notice, this Notice, when it becomes a final and effective order of suspension, will be in addition to any existing suspension, i.e., all requirements which are the bases of the suspension must be satisfied before the registration will be reinstated.

You are reminded that it is your responsibility as the basic registrant to notify all supplementary registered distributors of your basic registered product that this suspension action also applies to their supplementary registered products and that you may be held liable for violations committed by your distributors. If you have any questions about the requirements and procedures set forth in this suspension notice or in the subject section 4 Data Requirements Notice, please contact Stephen L. Brozena at (703) 308-8267.

Sincerely yours,

Director, Office of Compliance Monitoring

Attachments:

Attachment I - Product List

Attachment II - Requirement List

Attachment III - Explanatory Appendix

II. Registrants Receiving and Affected by Notices of Intent to Suspend; Date of Issuance; Active Ingredient and Products Affected

The following is a product list for which a letter of notification has been sent:

TABLE A.—PRODUCT LIST

Registrant Affected	EPA Registration Number	Active Ingredient	Name of Product	Date Issued
Atochem North America, Inc.	00458100280	Thiophanate-methyl	Topsin M Technical	7/2/92
	00458100288	Thiophanate-methyl	Topsin M Turf and Ornamentals Fungicide	7/2/92
	00458100322	Thiophanate-methyl	Topsin - M 70% WP	7/2/92
	00458100344	Thiophanate-methyl	Topsin M 5D Fungicide	7/2/92
	00458100352	Thiophanate-methyl	Topsin M 4.5 F	7/2/92
	00458100369	Thiophanate-methyl	Topsin M 5G Fungicide	7/2/92
	00458100372	Thiophanate-methyl	Topsin M 85 WDG	7/2/92
Security Products Company of Delaware, Inc.	05664400075	(b-Napthyloxy) acetic acid	No Seed Blossom Set Push Button Spray	7/2/92
UCB Chemicals Corporation	04572800004	Zinc dimethyldithiocarbamate	Ziram 76-Water Dispersible Granules	7/2/92
	04572800011	Zinc dimethyldithiocarbamate	Ziram Technical	7/2/92
	04572800012	Zinc dimethyldithiocarbamate	Ziram Spray	7/2/92
	04572800013	Zinc dimethyldithiocarbamate	Ziram 10 Dust	7/2/92
	04572800014	Zinc dimethyldithiocarbamate	Niagara Ziram (95%) Code 51	7/2/92
Vanderbilt R T Company Inc.	00196500019	Zinc dimethyldithiocarbamate	Vancide 51Z	7/2/92
	00196500026	Zinc dimethyldithiocarbamate	Vancide 51Z Dispersion	7/2/92
	00196500079	Zinc dimethyldithiocarbamate	Vancide MZ-96	7/2/92
Vineland Chemical Company, Inc.	00285300011	Calcium methanearsonate	Super Dal E Rad (Contains Calar)	7/2/92

III. Basis for Issuance of Notice of Intent; Requirement List

The following company failed to submit the following required data or information:

TABLE B.—REQUIREMENT LIST

Active Ingredient	Registrant Affected	Requirement Name	Guideline Reference Number	Original Due-Date
Thiophanate-methyl	Atochem North America, Inc.	Nature of Residue - Livestock	171-4(b)	8/24/91
Calcium methanearsonate	Vineland Chemical Company, Inc.	Chemical Identity	61-1	8/24/90
		Beginning Material and Manuf Process	61-2(a)	8/24/90
		Discussion of Impurities	61-2(b)	8/24/90
		Preliminary Analysis of Product Samples	62-1	8/24/90
		Certification of Ingredient Limits	62-2	8/24/90
		Analytical Method to Verify Certified Limits	62-3	8/24/90
		Color	63-2	8/24/90
		Physical State	63-3	8/24/90
		Odor	63-4	8/24/90
		Boiling Point	63-6	8/24/90
		Density, Bulk Density, or Specific Gravity	63-7	8/24/90
		Solubility	63-8	8/24/90
		Vapor Pressure	63-9	8/24/90
		Dissociation Constant	63-10	8/24/90
		pH	63-12	8/24/90
		Stability	63-13	8/24/90
		Chemical Identity	160-5	8/24/90
		Chemical Identity	171-2	8/24/90
(b-Napthyloxy) acetic acid	Security Products Company of Delaware, Inc.	Chemical Identity	61-1	8/24/90
		Beginning Material and Manuf Process	61-2(a)	8/24/90
		Discussion of Impurities	61-2(b)	8/24/90
		Certification of Ingredient Limits	62-2	8/24/90
		Analytical Method to Verify Certified Limits	62-3	8/24/90
		Color	63-2	8/24/90
		Physical State	63-3	8/24/90
		Odor	63-4	8/24/90
		Melting Point	63-5	8/24/90
		Boiling Point	63-6	8/24/90
		Density, Bulk Density, or Specific Gravity	63-7	8/24/90
		Solubility	63-8	8/24/90
		Vapor Pressure	63-9	8/24/90
		Dissociation Constant	63-10	8/24/90
		pH	63-12	8/24/90
		Stability	63-13	8/24/90
Zinc dimethyldithiocarbamate	Vanderbilt R T Company Inc.,	Acute Avian Dietary LC_{50} - Quail	71-2(a)	1/31/89
		Acute Avian Dietary LC_{50} - Duck	71-2(b)	1/31/89
		Fish Toxicity - Bluegill	72-1(a)	1/31/89
		Fish Toxicity - Rainbow Trout	72-1(c)	1/31/89
		Invertebrate Toxicity	72-2(a)	1/31/89
	UCB Chemicals Corporation	Acute Avian Dietary LC_{50} - Quail	71-2(a)	1/31/89
		Acute Avian Dietary LC_{50} - Duck	71-2(b)	1/31/89
		Fish Toxicity - Bluegill	72-1(a)	1/31/89
		Fish Toxicity - Rainbow Trout	72-1(c)	1/31/89
		Invertebrate Toxicity	72-2(a)	1/31/89

IV. Attachment III Suspension Report—Explanatory Appendix

A discussion of the basis for the Notice of Intent to Suspend follows:

A. Calcium Methanearsonate

On May 24, 1989, EPA issued the Phase 2 Data Requirements for Reregistration Notice imposed pursuant to section 4 of FIFRA which required registrants of products containing calcium methanearsonate to develop and submit certain data. These data were determined to be necessary to satisfy reregistration data requirements of section 4(d). Failure to comply with the requirements of a Phase 2 Data Requirements Notice is a basis for suspension under sections 3(c)(2)(B) and 4(d)(6) of FIFRA.

The Calcium Methanearsonate Reregistration Data Requirements Notice dated May 24, 1989, required each affected registrant to submit materials relating to the selection of the options to address each of the data requirements. That submission was required to be received by the Agency within 90 days of the registrant's receipt of the Notice. The Agency received a signed response from you dated May 24, 1990, in which you as a calcium methanearsonate registrant committed to undertake the required testing. The Notice further required that data be submitted by the deadlines noted for the subject data requirements on Attachment II. These deadlines have passed and to date the Agency has not received adequate data to satisfy these data requirements. Because you have failed to provide an appropriate or adequate response within the time provided for the data requirements listed on Attachment II, the Agency is issuing this Notice of Intent to Suspend.

B. Zinc Dimethyldithiocarbamate

On March 14, 1988, EPA issued a Data Call-In Notice (DCI) pursuant to the authority of FIFRA section 3[c][2][B] which required registrants of products containing zinc dimethyldithiocarbamate [ziram] used as an active ingredient to develop and submit data. These data were determined to be necessary to maintain the continued registration of affected products. Failure to comply is a basis for suspension under section 3(c)(2)(B) of FIFRA. Additionally, EPA subsequently issued Phase 2 and 3 Data Requirements for Reregistration Notices. Failure to comply with the requirements of a Phase 2 or 3 Data Requirements Notice is a

basis for suspension under sections 3(c)(2)(B) and 4 of FIFRA.

The Zinc Dimethyldithiocarbamate (Ziram) Data Call-In required each affected registrant to submit materials demonstrating selection by the registrant of the options to address the data requirements within 90 days of the registrant's receipt of the DCI. UCB Chemicals Corporation and Vanderbilt Company, Inc. received the DCI on April 11, 1988. UCB Chemicals Corporation and Vanderbilt Company, Inc., both registrants of certain affected zinc dimethyldithiocarbamate (ziram) products, committed to satisfy certain data for zinc dimethyldithiocarbamate (ziram) by the deadlines required by the Data Call-In Notice. Subsequently, the companies recommitted in response to Phase 2 and/or Phase 3 Data Requirements for Reregistration Notices. Those subsequent Notices maintained the original deadlines imposed by the DCI with respect to the subject data requirements. These deadlines have passed for the data requirements listed in Attachment II and to date the Agency has not received adequate data to satisfy these requirements. Because the companies have failed to provide an appropriate or adequate response within the time provided for the data requirements listed on Attachment II, the Agency is issuing this Notice of Intent to Suspend.

C. (b-Napthyloxy) Acetic Acid

On May 24, 1989, EPA issued the Phase 2 Data Requirements for Reregistration Notice imposed pursuant to section 4 of FIFRA which required registrants of products containing (b-Napthyloxy) acetic acid to develop and submit certain data. These data were determined to be necessary to satisfy reregistration data requirements of section 4(d). Failure to comply with the requirements of a Phase 2 Data Requirements Notice is a basis for suspension under sections 3(c)(2)(B) and 4(d)(6) of FIFRA.

The (b-Napthyloxy) Acetic Acid Reregistration Data Requirements Notice dated May 24, 1989, required each affected registrant to submit materials relating to the election of the options to address each of the data requirements. That submission was required to be received by the Agency within 90 days of the registrant's receipt of the Notice. The Agency received on August 30, 1989, a signed response from you dated August 25, 1989, in which you as a (b-Napthyloxy) Acetic Acid registrant committed to undertake the required testing. The Notice further required that data be submitted by the deadlines noted for the subject data requirements on Attachment II. These deadlines have passed and to date the Agency has not received adequate data to satisfy these data requirements. Because you have failed to provide an appropriate or adequate response within the time provided for the data requirements listed on Attachment II, the Agency is issuing this Notice of Intent to Suspend.

D. Thiophanate-methyl

On May 24, 1989, EPA issued the Phase 2 Data Requirements for Reregistration Notice imposed pursuant to section 4 of FIFRA which required registrants of products containing thiophanate-methyl to develop and submit certain data. These data were determined to be necessary to satisfy reregistration data requirements of section 4(d). Failure to comply with the requirements of a Phase 2 Data Requirements Notice is a basis for suspension under sections 3(c)(2)(B) and 4(d)(6) of FIFRA.

The Thiophanate-methyl Reregistration Data Requirements Notice dated May 24, 1989, required each affected registrant to submit materials relating to the selection of the options to address each of the data requirements. That submission was required to be received by the Agency within 90 days of the registrant's receipt of the Notice. The Agency received a signed response from you dated August 24, 1989, in which you as a thiophanate-methyl registrant committed to undertake the required testing. The Notice further required that data be submitted by the deadline noted for the subject data requirement on Attachment II. Just before the deadline, the registrant filed a time extension request on August 14, 1991, requesting that EPA extend the study submission date to March 31, 1992. The Agency's deadline has passed as has the extension requested by the registrant and to date the Agency has not received adequate data to satisfy this data requirement. Because you have failed to provide an appropriate or adequate response within the time provided for the data requirement listed on Attachment II, the Agency is issuing this Notice of Intent to Suspend.

V. Conclusions

EPA has issued Notices of Intent to Suspend on the dates indicated. Any further information regarding these Notices may be obtained from the contact person noted above.

Dated: July 15, 1992.

Michael M. Stahl,

Director, Office of Compliance Monitoring.

[FR Doc. 92-17285 Filed 7-21-92; 8:45 am]

BILLING CODE 6560-50-F

[OPP-60039; FRL-4079-4]

Intent to Suspend Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of issuance of notices of intent to suspend.

SUMMARY: This Notice, pursuant to section 6(f)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 et seq., announces that EPA has issued Notices of Intent to Suspend pursuant to sections 3(c)(2)(B) and 4 of FIFRA. The Notices were issued following issuance of Section 4 Reregistration Requirements Notices by the Agency and the failure of registrants subject to the Section 4 Reregistration Requirements Notices to take appropriate steps to secure the data required to be submitted to the Agency. This Notice includes the text of a Notice of Intent to Suspend, absent specific chemical, product, or factual information. Table A of this Notice further identifies the registrants to whom the Notices of Intent to Suspend were issued, the date each Notice of Intent to Suspend was issued, the active ingredient(s) involved, and the EPA registration numbers and names of the registered product(s) which are affected by the Notices of Intent to Suspend. Moreover, Table B of this Notice identifies the basis upon which the Notices of Intent to Suspend were issued. Finally, matters pertaining to the timing of requests for hearing are specified in the Notices of Intent to Suspend and are governed by the deadlines specified in section 3(c)(2)(B). As required by section 6(f)(2), the Notices of Intent to Suspend were sent by certified mail, return receipt requested, to each affected registrant at its address of record.

FOR FURTHER INFORMATION CONTACT: Stephen L. Brozena, Office of Compliance Monitoring (EN-342), Laboratory Data Integrity Assurance Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, (703) 308-8267.

SUPPLEMENTARY INFORMATION:

I. Text of a Notice of Intent to Suspend

The text of a Notice of Intent to Suspend, absent specific chemical, product, or factual information, follows:

United States Environmental Protection Agency

Office of Prevention, Pesticides and Toxic Substances

Washington, DC 20460

Certified Mail

Return Receipt Requested

SUBJECT: Suspension of Registration of Pesticide Product(s) Containing _____ for Failure to Comply with the Section 4 Reregistration Requirements Notice for _____ Dated _____.

Dear Sir/Madam:

This letter gives you notice that the pesticide product registrations listed in Attachment I will be suspended 30 days from your receipt of this letter unless you take steps within that time to prevent this Notice from automatically becoming a final and effective order of suspension. The Agency's authority for suspending the registrations of your products is sections 3(c)(2)(B) and 4 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Upon becoming a final and effective order of suspension, any violation of the order will be an unlawful act under section 12(a)(2)(J) of FIFRA.

You are receiving this Notice of Intent to Suspend because you have failed to comply with the terms of the Phase 3 Data Requirements for Reregistration Notice imposed pursuant to Section 4 of FIFRA. The specific basis for issuance of this Notice is stated in the Explanatory Appendix (Attachment III) to this Notice. The affected product(s) and the requirement(s) which you failed to satisfy are listed and described in the following three attachments:

Attachment I Suspension Report - Product List

Attachment II Suspension Report - Requirement List

Attachment III Suspension Report - Explanatory Appendix

The suspension of the registration of each product listed in Attachment I will become final unless at least one of the following actions is completed.

1. You may avoid suspension under this Notice if you or another person adversely affected by this Notice properly request a hearing within 30 days of your receipt of this Notice. If you request a hearing, it will be conducted in accordance with the requirements of section 6(d) of FIFRA and the Agency's procedural regulations in 40 CFR part 164.

Section 3(c)(2)(B), however, provides that the only allowable issues which may be addressed at the hearing are whether you have failed to take the actions which are the bases of this Notice and whether the Agency's decision regarding the disposition of existing stocks is consistent with FIFRA. Therefore, no substantive allegation or legal argument concerning other issues, including but not limited to the Agency's original decision to require the submission of data or other information, the need for or utility of any of the required data or other information or deadlines imposed, and the risks and benefits associated with continued registration of the affected product, may be considered in the proceeding. The Administrative Law Judge shall by order dismiss any objections which have no bearing on the allowable issues which may be considered in the proceeding.

Section 3(c)(2)(B)(iv) of FIFRA provides that any hearing must be held and a determination issued within 75 days after receipt of a hearing request. This 75-day period may not be extended unless all parties in the proceeding stipulate to such an extension. If a hearing is properly requested, the Agency will issue a final order at the conclusion of the hearing governing the suspension of your products.

A request for a hearing pursuant to this Notice must (1) include specific objections which pertain to the allowable issues which may be heard at the hearing, (2) identify the registrations for which a hearing is requested, and (3) set forth all necessary supporting facts pertaining to any of the objections which you have identified in your request for a hearing. If a hearing is requested by any person other than the registrant, that person must also state specifically why he asserts that he would be adversely affected by the suspension action described in this Notice. Three copies of the request must be submitted to: Hearing Clerk, A-110, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, and an additional copy should be sent to the signatory listed below. The request must be *received* by the Hearing Clerk by the 30th day from your receipt of this Notice in order to be legally effective. The 30-day time limit is established by FIFRA and cannot be extended for any reason. Failure to meet the 30-day time limit will result in automatic suspension of your registration(s) by operation of law and, under such circumstances, the suspension of the registration for your affected product(s) will be final and effective at the close of business 30 days after your receipt of this Notice and will not be subject to further administrative review.

The Agency's Rules of Practice at 40 CFR 164.7 forbid anyone who may take part in deciding this case, at any stage of the proceeding, from discussing the merits of the proceeding *ex parte* with any party or with any person who has been connected with the preparation or presentation of the proceeding as an advocate or in any investigative or expert capacity, or with any of their representatives. Accordingly, the following EPA offices, and the staffs thereof, are designated as judicial staff to perform the judicial function of EPA in any administrative hearings on this Notice of Intent to Suspend: The Office of the Administrative Law Judges, the Office of the Judicial Officer, the Administrator, the Deputy Administrator, and the members of the staff in the immediate offices of the Administrator and Deputy Administrator. None of the persons designated as the judicial staff shall have any *ex parte* communication with trial staff or any other interested person not employed by EPA on the merits of any of the issues involved in this proceeding, without fully complying with the applicable regulations.

2. You may also avoid suspension if, within 30 days of your receipt of this Notice, the Agency determines that you have taken appropriate steps to comply with the section 4 Data Requirements for Reregistration. In order to avoid suspension under this option, you must satisfactorily comply with Attachment II, Requirement List, for each product by submitting all required supporting data/information described in Attachment II and in the Explanatory Appendix (Attachment III) to the following address (preferably by certified mail):

Office of Compliance Monitoring (EN-342), Laboratory Data Integrity Assurance Division, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

For you to avoid automatic suspension under this Notice, the Agency must also determine within the applicable 30-day period that you have satisfied the requirements that are the bases of this Notice and so notify you in writing. You should submit the necessary data/information as quickly as possible for there to be any chance the Agency will be able to make the necessary determination in time to avoid suspension of your product(s).

The suspension of the registration(s) of your company's product(s) pursuant to this Notice will be rescinded when the Agency determines you have complied fully with the requirements

which were the bases of this Notice. Such compliance may only be achieved by submission of the data/information described in the attachments to the signatory below.

Your product will remain suspended, however, until the Agency determines you are in compliance with the requirements which are the bases of this Notice and so informs you in writing.

After the suspension becomes final and effective, the registrant subject to this Notice, including all supplemental registrants of product(s) listed in Attachment I, may not legally distribute, sell, use, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person, the product(s) listed in Attachment I.

Persons other than the registrant subject to this Notice, as defined in the preceding sentence, may continue to distribute, sell, use, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person, the product(s) listed in Attachment I.

Nothing in this Notice authorizes any person to distribute, sell, use, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person, the product(s) listed in Attachment I in any manner which would have been unlawful prior to the suspension.

If the registrations of your products listed in Attachment I are currently suspended as a result of failure to comply with another section 4 Data Requirements Notice or section 3(c)(2)(B) Data Call-In Notice, this Notice, when it becomes a final and effective order of suspension, will be in addition to any existing suspension, i.e., all requirements which are the bases of the suspension must be satisfied before the registration will be reinstated.

You are reminded that it is your responsibility as the basic registrant to notify all supplementary registered distributors of your basic registered product that this suspension action also applies to their supplementary registered products and that you may be held liable for violations committed by your distributors. If you have any questions about the requirements and procedures set forth in this suspension notice or in the subject section 4 Data Requirements Notice, please contact Stephen L. Brozena at (703) 308–8267.

Sincerely yours,

Director, Office of Compliance Monitoring

Attachments:
Attachment I - Product List
Attachment II - Requirement List
Attachment III - Explanatory Appendix

II. Registrants Receiving and Affected by Notices of Intent to Suspend; Date of Issuance; Active Ingredient and Products Affected

The following is a product list for which a letter of notification has been sent:

TABLE A.—PRODUCT LIST

Registrant Affected	EPA Registration Number	Active Ingredient	Name of Product	Date Issued
Atochem North America, Inc.	00458100140	Zinc dimethyldithiocarbamate	Ziram 76	7/2/92
	00458100230	Zinc dimethyldithiocarbamate	Ziram F-4	7/2/92
	00458100261	Zinc dimethyldithiocarbamate	Ziram Technical	7/2/92
	WA82004400	Zinc dimethyldithiocarbamate	Ziram F-4	7/2/92
CFPI	03368800001	Butralin	No Crab	7/2/92
	03368800002	Butralin	Technical Amex 820	7/2/92
NOR-AM Chemical Company	04563900004	Ethofumesate	Norton Technical	7/2/92
	04563900005	Ethofumesate	Norton E.C.	7/2/92
	04563900007	Ethofumesate	Norton Granule	7/2/92
	04563900008	Ethofumesate	Norton Flowable Herbicide	7/2/92
	04563900060	Ethofumesate	Norton GS	7/2/92
	04563900062	Ethofumesate	Prograss Flowable Herbicide	7/2/92
	04563900068	Ethofumesate	Prograss Emulsifiable Concentrate	7/2/92
Security Products Company of Delaware, Inc.	05664400075	(b-Napthyloxy) acetic acid	No Seed Blossom Set Push Button Spray	7/2/92
UCB Chemicals Corporation	04572800007	Ferric dimethyldithiocarbamate	Carbamate	7/2/92
	04572800008	Ferric dimethyldithiocarbamate	Niagara Ferbam Dust Base 87 1/2%	7/2/92
	04572800004	Zinc dimethyldithiocarbamate	Ziram 76-Water Dispersible Granules	7/2/92
	04572800011	Zinc dimethyldithiocarbamate	Ziram Technical	7/2/92
	04572800012	Zinc dimethyldithiocarbamate	Ziram Spray	7/2/92
	04572800013	Zinc dimethyldithiocarbamate	Ziram 10 Dust	7/2/92
	04572800014	Zinc dimethyldithiocarbamate	Niagara Ziram (95%) Code 51	7/2/92
Vanderbilt R T Company Inc.	00196500019	Zinc dimethyldithiocarbamate	Vancide 51Z	7/2/92
	00196500026	Zinc dimethyldithiocarbamate	Vancide 51Z Dispersion	7/2/92
	00196500079	Zinc dimethyldithiocarbamate	Vancide MZ-96	7/2/92

III. Basis for Issuance of Notice of Intent; Requirement List

The following company failed to submit the following required data or information:

TABLE B.—REQUIREMENT LIST

Active Ingredient	Registrant Affected	Requirement Name	Guideline Reference Number	Original Due-Date
Butralin	CFPI	Hydrolysis	161-1	10/12/91
		Photodegradation - Water	161-2	10/12/91
		Photodegradation - Soil	161-3	10/12/91
Ferric dimethyldithiocarbamate	UCB Chemicals Corporation	Fish Toxicity - Bluegill	72-1(a)	5/24/91
		Fish Toxicity - Rainbow Trout	72-1(c)	5/24/91
		Invertebrate Toxicity	72-2(a)	5/24/91
(b-Napthyloxy) acetic acid	Security Products Company of Delaware, Inc.	Preliminary Analysis of Product Samples	62-1	5/25/91
		Octanol/Water Partition Coefficient	63-11	5/25/91
Ethofumesate	NOR-AM Chemical Company	Nature of Residue - Plants	171-4(a)	5/24/91
Zinc dimethyldithiocarbamate	Vanderbilt R T Company Inc.	Acute Avian Dietary LC_{50} - Quail	71-2(a)	1/31/89
		Acute Avian Dietary LC_{50} - Duck	71-2(b)	1/31/89
		Fish Toxicity - Bluegill	72-1(a)	1/31/89
		Fish Toxicity - Rainbow Trout	72-1(c)	1/31/89
		Invertebrate Toxicity	72-2(a)	1/31/89
	Atochem North America, Inc.	Acute Avian Dietary LC_{50} - Quail	71-2(a)	1/31/89
		Acute Avian Dietary LC_{50} - Duck	71-2(b)	1/31/89
		Fish Toxicity - Bluegill	72-1(a)	1/31/89
		Fish Toxicity - Rainbow Trout	72-1(c)	1/31/89
		Invertebrate Toxicity	72-2(a)	1/31/89
	UCB Chemicals Corporation	Acute Avian Dietary LC_{50} - Quail	71-2(a)	1/31/89
		Acute Avian Dietary LC_{50} - Duck	71-2(b)	1/31/89
		Fish Toxicity - Bluegill	72-1(a)	1/31/89
		Fish Toxicity - Rainbow Trout	72-1(c)	1/31/89
		Invertebrate Toxicity	72-2(a)	1/31/89

IV. Attachment III Suspension Report—Explanatory Appendix

A discussion of the basis for the Notice of Intent to Suspend follows:

A. Ferric dimethyldithiocarbamate

In March 1990, EPA issued the Phase 3 Data Requirements for Reregistration Notice imposed pursuant to section 4(e) of FIFRA which required registrants of products containing ferric dimethyldithiocarbamate (ferbam) to develop and submit certain data. These data were determined to be necessary to satisfy reregistration data requirements of section 4(e). Failure to comply with the requirements of a Phase 3 Data Requirements Notice is a basis for suspension under sections 3(c)(2)(B) and 4 of FIFRA.

The Ferric Dimethyldithiocarbamate (Ferbam) Reregistration Data Requirements Notice dated March 1990, required each affected registrant to submit materials relating to the election of the options to address each of the data requirements. That submission was required to be received by the Agency within 90 days of the registrant's receipt of the Notice. The Agency received a signed response from you dated May 24, 1990, in which you as a ferric dimethyldithiocarbamate (ferbam) registrant committed to undertake required testing. The Notice further required that data be submitted by the deadlines noted for the subject data requirements on Attachment II. These deadlines have passed and to date the Agency has not received adequate data to satisfy these data requirements. Because you have failed to provide an appropriate or adequate response within the time provided for the data requirements listed on Attachment II, the Agency is issuing this Notice of Intent to Suspend.

B. Zinc dimethyldithiocarbamate

On March 14, 1988, EPA issued a Data Call-In Notice pursuant to the authority of FIFRA section 3(c)(2)(B) which required registrants of products containing zinc dimethyldithiocarbamate (ziram) used as an active ingredient to develop and submit certain data. These data were determined to be necessary to maintain the continued registration of affected products. Failure to comply is a basis for suspension under section 3(c)(2)(B) of FIFRA. Additionally, EPA subsequently issued Phase 2 and 3 Data Requirements for Reregistration Notices. Failure to comply with the requirements of a Phase 2 or 3 Data Requirements Notice is a basis for suspension under sections 3(c)(2)(B) and 4 of FIFRA.

The Zinc Dimethyldithiocarbamate (Ziram) Data Call-In required each affected registrant to submit materials demonstrating selection by the registrant of the options to address the data requirements within 90 days of the registrant's receipt of the DCI. Atochem North America, Inc. (Agchem Division-Pennwalt Corporation), UCB Chemicals Corporation, and Vanderbilt R T Company, Inc. received the DCI on April 11, 1988. All three companies are registrants of certain affected zinc dimethyldithiocarbamate (ziram) products, committed to satisfy certain data for zinc dimethyldithiocarbamate (ziram) by the deadlines required by the Data Call-In Notice. Subsequently, the companies recommitted in response to Phase 2 and/or Phase 3 Data Requirements for Reregistration Notices. Those subsequent Notices maintained the original deadlines imposed by the DCI with respect to the subject data requirements. These deadlines have passed for the data requirements listed in Attachment II and to date the Agency has not received adequate data to satisfy these requirements. Because the companies have failed to provide an appropriate or adequate response within the time provided for the data requirements listed on Attachment II, the Agency is issuing this Notice of Intent to Suspend.

C. (b-Napthyloxy) Acetic Acid

In March 1990, EPA issued the Phase 3 Data Requirements for Reregistration Notice imposed pursuant to section 4(e) of FIFRA which required registrants of products containing (b-Napthyloxy) acetic acid to develop and submit certain data. These data were determined to be necessary to satisfy reregistration data requirements of section 4(e). Failure to comply with the requirements of a Phase 3 Data Requirements Notice is a basis for

suspension under sections 3(c)(2)(B) and 4 of FIFRA.

The (b-Napthyloxy) Acetic Acid Reregistration Data Requirements Notice dated March 1990, required each affected registrant to submit materials relating to the election of the options to address each of the data requirements. That submission was required to be received by the Agency within 90 days of the registrant's receipt of the Notice. The Agency received a signed response from you dated May 23, 1990, in which you as a (b-Napthyloxy) acetic acid registrant committed to undertake required testing. The Notice further required that data be submitted by the deadlines noted for the subject data requirements on Attachment II. These deadlines have passed and to date the Agency has not received adequate data to satisfy these data requirements. Because you have failed to provide an appropriate or adequate response within the time provided for the data requirements listed on Attachment II, the Agency is issuing this Notice of Intent to Suspend.

D. Butralin

In March 1990, EPA issued the Phase 3 Data Requirements for Reregistration Notice imposed pursuant to section 4(e) of FIFRA which required registrants of products containing butralin to develop and submit certain data. These data were determined to be necessary to satisfy reregistration data requirements of section 4(e). Failure to comply with the requirements of a Phase 3 Data Requirements Notice is a basis for suspension under sections 3(c)(2)(B) and 4 of FIFRA.

The Butralin Reregistration Data Requirements Notice dated March 1990, required each affected registrant to submit materials relating to the election of the options to address each of the data requirements. That submission was required to be received by the Agency within 90 days of the registrant's receipt of the Notice. The Agency received a signed response from you dated May 23, 1990, and subsequently amended on October 12, 1990, in which you as a butralin registrant committed to undertake required testing. The Notice further required that data be submitted by the deadlines noted for the subject data requirements on Attachment II. These deadlines have passed and to date the Agency has not received adequate data to satisfy these data requirements. Because you have failed to provide an appropriate or adequate response within the time provided for the data requirements listed on Attachment II, the Agency is issuing this Notice of Intent to Suspend.

E. Ethofumesate

In March 1990, EPA issued the Phase 3 Data Requirements for Reregistration Notice imposed pursuant to section 4(e) of FIFRA which required registrants of products containing ethofumesate to develop and submit certain data. These data were determined to be necessary to satisfy reregistration data requirements of section 4(e). Failure to comply with the requirements of a Phase 3 Data Requirements Notice is a basis for suspension under sections 3(c)(2)(B) and 4 of FIFRA.

The Ethofumesate Reregistration Data Requirements Notice dated March 1990, required each affected registrant to submit materials relating to the selection of the options to address each of the data requirements. That submission was required to be received by the Agency within 90 days of the registrant's receipt of the Notice. The Agency received a signed response from you dated May 25, 1990, in which you as a ethofumesate registrant committed to undertake required testing. The Notice further required that data be submitted by the deadline noted for the subject data requirement on Attachment II. This deadline has passed and to date the Agency has not received adequate data to satisfy this data requirement. Because you have failed to provide an appropriate or adequate response within the time provided for the data requirement listed on Attachment II, the Agency is issuing this Notice of Intent to Suspend.

V. Conclusions

EPA has issued Notices of Intent to Suspend on the dates indicated. Any further information regarding these Notices may be obtained from the contact person noted above.

Dated: July 15, 1992.

Michael M. Stahl,

Director, Office of Compliance Monitoring.

[FR Doc. 92-17286 Filed 7-21-92; 8:45 am]

BILLING CODE 6560-50-F

[OPP-60037 FRL-4079-2]

Intent to Suspend Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of issuance of notices of intent to suspend.

SUMMARY: This notice, pursuant to section 6 (f)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 et seq., announces that EPA has issued Notice(s) of Intent to Suspend pursuant to section 3(c)(2)(B) of FIFRA. The notice(s) were issued following issuance of Data Call-In Notice(s) by the Agency and the failure of registrant(s) subject to the Data Call-In Notice(s) to take appropriate steps to secure the data required to be submitted to the Agency. This notice includes the text of a Notice of Intent to Suspend, absent specific chemical, product, or factual information. Table A of this notice further identifies the registrant(s) to whom the Notice(s) of Intent to Suspend were issued, the date each Notice of Intent to Suspend was issued, the active ingredient(s) involved, and the EPA registration number(s) and name(s) of the registered product(s) which are affected by the Notice(s) of Intent to Suspend. Moreover, Table B of this notice identifies the basis upon which the Notice(s) of Intent to Suspend were issued. Finally, matters pertaining to the timing of requests for hearing are specified in the Notice(s) of Intent to Suspend and are governed by the deadlines specified in section 3(c)(2)(B). As required by section 6(f)(2), the Notice(s) of Intent to Suspend were sent by certified mail, return receipt requested, to each affected registrant at its address of record.

FOR FURTHER INFORMATION CONTACT: Stephen L. Brozena, Office of Compliance Monitoring (EN-342), Laboratory Data Integrity Assurance Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, (703) 308-8267.

SUPPLEMENTARY INFORMATION:

I. Text of a Notice of Intent to Suspend

The text of a Notice of Intent to Suspend, absent specific chemical, product, or factual information, follows:

United States Environmental Protection Agency

Office of Prevention, Pesticides and Toxic Substances

Washington, DC 20460

Certified Mail

Return Receipt Requested

SUBJECT: Suspension of Registration of Pesticide Product(s) Containing _____ for Failure to Comply with the 3(c)(2)(B) Data Call-In Notice for _____ Dated _____.

Dear Sir/Madam:

This letter gives you notice that the pesticide product registration(s) listed in Attachment I will be suspended 30 days from your receipt of this letter unless you take steps within that time to prevent this Notice from automatically becoming a final and effective order of suspension. The Agency's authority for

suspending the registration(s) of your product(s) is section 3(c)(2)(B) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Upon becoming a final and effective order of suspension, any violation of the order will be an unlawful act under section 12(a)(2)(J) of FIFRA.

You are receiving this Notice of Intent to Suspend because you have failed to comply with the terms of the 3(c)(2)(B) Data Call-In Notice. The specific basis for issuance of this Notice is stated in the Explanatory Appendix (Attachment III) to this Notice. Affected product(s) and the requirement(s) which you failed to satisfy are listed and described in the following three attachments:

Attachment I Suspension Report - Product List

Attachment II Suspension Report - Requirement List

Attachment III Suspension Report - Explanatory Appendix

The suspension of the registration of each product listed in Attachment I will become final unless at least one of the following actions is completed.

1. You may avoid suspension under this Notice if you or another person adversely affected by this Notice properly request a hearing within 30 days of your receipt of this Notice. If you request a hearing, it will be conducted in accordance with the requirements of section 6(d) of FIFRA and the Agency's procedural regulations in 40 CFR part 164.

Section 3(c)(2)(B), however, provides that the only allowable issues which may be addressed at the hearing are whether you have failed to take the actions which are the bases of this Notice and whether the Agency's decision regarding the disposition of existing stocks is consistent with FIFRA. Therefore, no substantive allegation or legal argument concerning other issues, including but not limited to the Agency's original decision to require the submission of data or other information, the need for or utility of any of the required data or other information or deadlines imposed, and the risks and benefits associated with continued registration of the affected product, may be considered in the proceeding. The Administrative Law Judge shall by order dismiss any objections which have no bearing on the allowable issues which may be considered in the proceeding.

Section 3(c)(2)(B)(iv) of FIFRA provides that any hearing must be held and a determination issued within 75 days after receipt of a hearing request. This 75-day period may not be extended unless all parties in the proceeding stipulate to such an extension. If a hearing is properly requested, the Agency will issue a final order at the conclusion of the hearing governing the suspension of your product(s).

A request for a hearing pursuant to this Notice must (1) include specific objections which pertain to the allowable issues which may be heard at the hearing, (2) identify the registration(s) for which a hearing is requested, and (3) set forth all necessary supporting facts pertaining to any of the objections which you have identified in your request for a hearing. If a hearing is requested by any person other than the registrant, that person must also state specifically why he asserts that he would be adversely affected by the suspension action described in this Notice. Three copies of the request must be submitted to: Hearing Clerk, A-110, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, and an additional copy should be sent to the signatory listed below. The request must be *received* by the Hearing Clerk by the 30th day from your receipt of this Notice in order to be legally effective. The 30-day time limit is established by FIFRA and cannot be extended for any reason. Failure to meet the 30-day time limit will result in automatic suspension of your registration(s) by operation of law and, under such circumstances, the suspension of the registration for your affected product(s) will be final and effective at the close of business 30 days after your receipt of this Notice and will not be subject to further administrative review.

The Agency's Rules of Practice at 40 CFR 164.7 forbid anyone who may take part in deciding this case, at any stage of the proceeding, from discussing the merits of the proceeding *ex parte* with any party or with any person who has been connected with the preparation or presentation of the proceeding as an advocate or in any investigative or expert capacity, or with any of their representatives. Accordingly, the following EPA offices, and the staffs thereof, are designated as judicial staff to perform the judicial function of EPA in any administrative hearings on this Notice of Intent to Suspend: The Office of the Administrative Law Judges, the Office of the Judicial Officer, the Administrator, the Deputy Administrator, and the members of the staff in the immediate offices of the Administrator and Deputy Administrator. None of the persons designated as the judicial staff shall have any *ex parte* communication with trial staff or any other interested person not employed by EPA on the merits of any of the issues involved in this proceeding, without fully complying with the applicable regulations.

2. You may also avoid suspension if, within 30 days of your receipt of this Notice, the Agency determines that you have taken appropriate steps to comply with the section 3(c)(2)(B) Data Call-In Notice. In order to avoid suspension under this option, you must satisfactorily comply with Attachment II, Requirement List, for each product by submitting all required supporting data/information described in Attachment II and in the Explanatory Appendix (Attachment III) to the following address (preferably by certified mail):

Office of Compliance Monitoring (EN-342), Laboratory Data Integrity Assurance Division, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

For you to avoid automatic suspension under this Notice, the Agency must also determine within the applicable 30-day period that you have satisfied the requirement(s) that are the bases of this Notice and so notify you in writing. You should submit the necessary data/information as quickly as possible for there to be any chance the Agency will be able to make the necessary determination in time to avoid suspension of your product(s).

The suspension of the registration(s) of your company's product(s) pursuant to this Notice will be rescinded when the Agency determines you have complied fully with the requirements which were the bases of this Notice. Such compliance may only be achieved by submission of the data/information described in the attachments to the signatory below.

Your product will remain suspended, however, until the Agency determines you are in compliance with the requirements which are the bases of this Notice and so informs you in writing.

After the suspension becomes final and effective, the registrant subject to this Notice, including all supplemental registrants of product(s) listed in Attachment I, may not legally distribute, sell, use, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person, the product(s) listed in Attachment I.

Persons other than the registrant subject to this Notice, as defined in the preceding sentence, may continue to distribute, sell, use, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person, the product(s) listed in Attachment I.

Nothing in this Notice authorizes any person to distribute, sell, use, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so

received) deliver or offer to deliver, to any person, the product(s) listed in Attachment I in any manner which would have been unlawful prior to the suspension.

If the registration(s) of your product(s) listed in Attachment I are currently suspended as a result of failure to comply with another section 3(c)(2)(B) Data Call-In Notice or Section 4 Data Requirement Notice, this Notice, when it becomes a final and effective order of suspension, will be in addition to any existing suspension, i.e., all requirements which are the bases of the suspension must be satisfied before the registration will be reinstated.

You are reminded that it is your responsibility as the basic registrant to notify all supplementary registered distributors of your basic registered product that this suspension action also applies to their supplementary registered product(s) and that you may be held liable for violations committed by your distributors.

If you have any questions about the requirements and procedures set forth in this suspension notice or in the subject 3(c)(2)(B) Data Call-In Notice, please contact Stephen L. Brozena at (703) 308-8267.

Sincerely yours,

Director, Office of Compliance Monitoring

Attachments:

Attachment I - Product List

Attachment II - Requirement List

Attachment III - Explanatory Appendix

II. Registrant(s) Receiving and Affected by Notice(s) of Intent to Suspend; Date of Issuance; Active Ingredient and Product(s) Affected

A letter of notification has been sent for the following product(s):

TABLE A.—PRODUCT LIST

Registrant Affected	EPA Registration Number	Active Ingredient	Name of Product	Date Issued
NOR-AM Chemical Company	04563900004	Ethofumesate	Norton Technical	7/2/92
	04563900005	Ethofumesate	Norton E.C.	7/2/92
	04563900007	Ethofumesate	Norton Granule	7/2/92
	04563900008	Ethofumesate	Norton Flowable Herbicide	7/2/92
	04563900060	Ethofumesate	Norton GS	7/2/92
	04563900062	Ethofumesate	Prograss Flowable Herbicide	7/2/92
	04563900068	Ethofumesate	Prograss Emulsifiable Concentrate	7/2/92
PBI/Gordon Corporation	00221700759	Diethanolamine mefluidide	Embark 2-S Plant Growth Regulator	7/2/92
	00221700763	Diethanolamine mefluidide	Embark 3M 1-S Plant Growth Regulator	7/2/92
	00221700767	Diethanolamine mefluidide	Mefluidide 2-S Concentrate	7/2/92
	00221700768	Diethanolamine mefluidide	Embark E-2-Tu-Use Plant Growth Regulator	7/2/92
	00221700765	Potassium mefluidide	Embark 1-L Plant Growth Regulator	7/2/92
	00221700766	Potassium mefluidide	Embark 2-L Plant Growth Regulator	7/2/92
UCB Chemicals Corporation	04572800004	Zinc dimethyldithiocarbamate	Ziram 76-Water Dispersible Granules	7/2/92
	04572800011	Zinc dimethyldithiocarbamate	Ziram Technical	7/2/92
	04572800012	Zinc dimethyldithiocarbamate	Ziram Spray	7/2/92
	04572800013	Zinc dimethyldithiocarbamate	Ziram 10 Dust	7/2/92
	04572800014	Zinc dimethyldithiocarbamate	Niagara Ziram (95%) Code 51	7/2/92
Vanderbilt R T Company Inc.	00196500019	Zinc dimethyldithiocarbamate	Vancide 51Z	7/2/92
	00196500026	Zinc dimethyldithiocarbamate	Vancide 51Z Dispersion	7/2/92
	00196500079	Zinc dimethyldithiocarbamate	Vancide MZ-96	7/2/92
Atochem North America, Inc.	00458100140	Zinc dimethyldithiocarbamate	Ziram 76	7/2/92
	00458100230	Zinc dimethyldithiocarbamate	Ziram F-4	7/2/92
	00458100261	Zinc dimethyldithiocarbamate	Ziram Technical	7/2/92
	WA82004400	Zinc dimethyldithiocarbamate	Ziram F-4	7/2/92

III. Basis for Issuance of Notice of Intent; Requirement List

The following registrant(s) failed to submit the following required data or information:

TABLE B.—REQUIREMENT LIST

Active Ingredient	Registrant Affected	Requirement Name	Guideline Reference Number	Original Due-Date
Diethanolamine mefluidide	PBI/Gordon Corporation	Estuarine & Marine Organisms - Fish	72-3(a)	2/28/92
		Estuarine & Marine Organisms - Mollusk	72-3(b)	2/28/92
		Estuarine & Marine Organisms - Shrimp	72-3(c)	2/28/92
Potassium mefluidide	PBI/Gordon Corporation	Estuarine & Marine Organisms - Fish	72-3(a)	2/28/92
		Estuarine & Marine Organisms - Mollusk	72-3(b)	2/28/92
		Estuarine & Marine Organisms - Shrimp	72-3(c)	2/28/92
		Structural Chromosomal Aberration	84-2(b)	2/28/92
Zinc dimethyldithiocarbamate	Vanderbilt R T Company Inc.	Acute Avian Dietary LC_{50} - Quail	71-2(a)	1/31/89
		Acute Avian Dietary LC_{50} - Duck	71-2(b)	1/31/89
		Fish Toxicity - Bluegill	72-1(a)	1/31/89
		Fish Toxicity - Rainbow Trout	72-1(c)	1/31/89
		Invertebrate Toxicity	72-2(a)	1/31/89

TABLE B.—REQUIREMENT LIST—Continued

Active Ingredient	Registrant Affected	Requirement Name	Guideline Reference Number	Original Due-Date
	UCB Chemicals Corporation	Acute Avian Dietary LC_{50} - Quail	71-2(a)	1/31/89
		Acute Avian Dietary LC_{50} - Duck	71-2(b)	1/31/89
		Fish Toxicity - Bluegill	72-1(a)	1/31/89
		Fish Toxicity - Rainbow Trout	72-1(c)	1/31/89
		Invertebrate Toxicity	72-2(a)	1/31/89
	Atochem North America, Inc.	Acute Avian Dietary LC_{50} - Quail	71-2(a)	1/31/89
		Acute Avian Dietary LC_{50} - Duck	71-2(b)	1/31/89
		Fish Toxicity - Bluegill	72-1(a)	1/31/89
		Fish Toxicity - Rainbow Trout	72-1(c)	1/31/89
		Invertebrate Toxicity	72-2(a)	1/31/89
Ethofumesate	NOR-AM Chemical Company	Leaching and Adsorption/Desorption	163-1	6/25/92

IV. Attachment III Suspension Report--Explanatory Appendix

A discussion of the basis for the Notice of Intent to Suspend follows:

A. Zinc Dimethyldithiocarbamate

On March 14, 1988, EPA issued a Data Call-In Notice (DCI) pursuant to the authority of FIFRA section 3(c)(2)(B) which required registrants of products containing zinc dimethyldithiocarbamate (ziram) used as an active ingredient to develop and submit data. These data were determined to be necessary to maintain the continued registration of affected products. Failure to comply is a basis for suspension under section 3(c)(2)(B) of FIFRA. Additionally, EPA subsequently issued Phase 2 and 3 Data Requirements for Reregistration Notices. Failure to comply with the requirements of a Phase 2 or 3 Data Requirements Notice is a basis for suspension under sections 3(c)(2)(B) and 4 of FIFRA.

The Zinc Dimethyldithiocarbamate (Ziram) Data Call-In required each affected registrant to submit materials demonstrating selection by the registrant of the options to address the data requirements within 90 days of the registrant's receipt of the DCI. Atochem North America, Inc. (Agchem Division-Pennwalt Corporation), UCB Chemicals Corporation, and Vanderbilt Company, Inc. received the DCI on April 11, 1988. All three registrants of certain affected zinc dimethyldithiocarbamate (ziram) products, committed to satisfy certain data for zinc dimethyldithiocarbamate (ziram) by the deadlines required by the Data Call-In Notice. Subsequently, the companies recommitted in response to Phase 2 and/or Phase 3 Data Requirements for Reregistration Notices. Those subsequent Notices maintained the original deadlines imposed by the DCI with respect to the subject data requirements. These deadlines have passed for the data requirements listed in Attachment II and to date the Agency has not received adequate data to satisfy these requirements. Because the companies have failed to provide an appropriate or adequate response within the time provided for the data requirements listed on Attachment II, the Agency is issuing this Notice of Intent to Suspend.

B. Ethofumesate

On June 19, 1991, EPA issued a Data Call-In Notice pursuant to the authority of FIFRA section 3(c)(2)(B) which required registrants of products containing ethofumesate used as an active ingredient to develop and submit data. These data were determined to be necessary to maintain the continued registration of affected products. Failure to comply is a basis for suspension under section 3(c)(2)(B) of FIFRA.

The Ethofumesate Data Call-In required each affected registrant to submit materials demonstrating selection by the registrant of the options to address the data requirements within 90 days of the registrant's receipt of the DCI. On September 20, 1991, Nor-Am Chemical Company, registrant of certain affected ethofumesate products, committed to generate and submit certain data for ethofumesate by the deadline required by the Data Call-In Notice. This deadline has passed for the data requirement listed in Attachment II and to date the Agency has not received adequate data to satisfy this requirement. Because you have failed to provide an appropriate or adequate response within the time provided for the data requirement listed on Attachment II, the Agency is issuing this Notice of Intent to Suspend.

C. Diethanolamine Mefluidide

On February 4, 1991, EPA issued a Data Call-In Notice pursuant to the authority of FIFRA section 3(c)(2)(B) which required registrants of products containing diethanolamine mefluidide used as an active ingredient to develop and submit data. These data were determined to be necessary to maintain the continued registration of affected products. Failure to comply with the data requirements of a Registration Standard is a basis for suspension under section 3(c)(2)(B) of FIFRA.

The Diethanolamine Mefluidide Data Call-In required each affected registrant to submit materials demonstrating selection by the registrant of the options to address the data requirements within 90 days of the registrant's receipt of the DCI. On May 9, 1991, PBI/Gordon Corporation, registrant of certain affected diethanolamine mefluidide products, committed to generate and submit certain data for diethanolamine mefluidide by the deadlines required by the Data Call-In Notice. These deadlines have passed for the data requirements listed in Attachment II and to date the Agency has not received adequate data to satisfy these requirements. Because you have failed to provide an appropriate or adequate response within the time provided for the data requirements listed on Attachment II, the Agency is issuing this Notice of Intent to Suspend.

D. Potassium Mefluidide

On February 4, 1991, EPA issued a Data Call-In Notice pursuant to the authority of FIFRA section 3(c)(2)(B) which required registrants of products containing potassium mefluidide used as an active ingredient to develop and submit data. These data were determined to be necessary to maintain the continued registration of affected products. Failure to comply with the data requirements of a Registration Standard is a basis for suspension under section 3(c)(2)(B) of FIFRA.

The Potassium Mefluidide Data Call-In required each affected registrant to submit materials demonstrating selection by the registrant of the options to address the data requirements within 90 days of the registrant's receipt of the DCI. On May 9, 1991, PBI/Gordon Corporation, registrant of certain

affected potassium mefluidide products, committed to generate and submit certain data for potassium mefluidide by the deadlines required by the Data Call-In Notice. These deadlines have passed for the data requirements listed in Attachment II and to date the Agency has not received adequate data to satisfy these requirements. Because you have failed to provide an appropriate or adequate response within the time provided for the data requirements listed on Attachment II, the Agency is issuing this Notice of Intent to Susepnd.

V. Conclusions

EPA has issued Notice(s) of Intent to Suspend on the dates indicated. Any further information regarding the Notice(s) may be obtained from the contact person noted above.

Dated: July 15, 1992.

Michael M. Stahl,

Director, Office of Compliance Monitoring.

[FR Doc. 92-17287 Filed 7-21-92; 8:45 am]

BILLING CODE 6560-50-F

[OPP-50745; FRL-4076-6]

Receipt of a Notification to Conduct Small-Scale Field Testing; Genetically Altered Microbial Pesticides

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received from Sandoz Agro, Inc. of Des Plaines, Illinois a notification of intent to conduct small-scale field tests involving certain genetically engineered *Bacillus thuringiensis* (Bt) strains of Sandoz's pSB909.5 Series in Mississippi in 1992 and in California, Florida, Maryland, and Mississippi in 1993 on potatoes and cole crops. The targeted pests are colorado potato beetle, cabbage looper, diamondback moth, imported cabbageworm, and celery leaftier.

DATES: Written comments must be received on or before August 21, 1992.

ADDRESSES: Comments, in triplicate, should bear the docket control number OPP-50744 and be submitted to: Public Response and Program Resources Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 1128, Crystal Mall #2, 1921 Jefferson Davis Highway, Crystal City, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. Written comments will be available for public inspection in Rm. 1128 at the address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Phillip O. Hutton, Product Manager (PM) 18, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 213, Crystal Mall #2, 1921 Jefferson Davis Highway, Crystal City, VA, (703) 305-7690.

SUPPLEMENTARY INFORMATION: A notification of intent to conduct small-scale field testing pursuant to EPA's Statement of Policy entitled, "Microbial Products Subject to the Federal Insecticide, Fungicide, and Rodenticide Act and the Toxic Substances Control Act," published in the **Federal Register** of June 26, 1986 (51 FR 23313), has been received from Sandoz Agro, Inc. of Des Plaines, Illinois. The proposed testing involves a series of small-scale field tests with genetically engineered strains of *Bacillus thuringiensis* (Bt) of Sandoz's pSB909.5 Series in Mississippi in 1992 and in California, Florida, Maryland, and Mississippi in 1993 on potatoes and cole crops. The targeted pests are colorado potato beetle, cabbage looper, diamondback moth, imported cabbageworm, and celery leaftier. All treated crops will be tilled back into the soil following field tests. All field tests will be conducted by Sandoz personnel. A maximum of 1.2 acres will be utilized in the 2 year testing program.

The strains designated as members of the pSB909.5 Series all have the following characteristics.

1. The same cloning vector (pSB909.5). This cloning vector consists of the origin of replication of a Bt plasmid, as well as an antibiotic resistance marker isolated from *Bacillus subtilis*.

2. A crystal protein toxin gene (*cry*) from Bt subspecies *aizawai, kurstaki, or tenebrionis*. The *cry* genes are not modified.

3. The recipient microorganisms will be either a Sandoz Bt subspecies *tenebrionis* strain (currently used in TRIDENT® Biological Insecticide), a Bt subspecies *kurstaki* strain (currently used in JAVELIN® Biological Insecticide), or a Bt subpecies *kurstaki* strain (currently used in THURICIDE® Biological Insecticide).

Following the review of Sandoz Agro's application and any comments received in response to this notice, EPA will decide whether or not experimental use permits are required.

Dated: July 10, 1992.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 92-17025 Filed 7-21-92; 8:45 am]

BILLING CODE 6560-50-F

[FRL-4157-1]

Proposed Settlement Under Section 122(g) of the Comprehensive Environmental Response, Compensation and Liability Act; Alascom, Inc., et al.

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice of proposed administrative settlement and opportunity for public comment.

SUMMARY: The U.S. Environmental Protection Agency ("EPA") is proposing to enter into an administrative settlement to resolve claims under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"). Notice is being published to inform the public of the proposed settlement and of the opportunity to comment. The settlement is intended to resolve past and estimated future liabilities of 27 *de minimis* parties for costs incurred, or to be incurred, by EPA at the Alaskan Battery Enterprises Site in Fairbanks, Alaska.

DATES: Comments must be provided on or before August 21, 1992.

ADDRESSES: Comments should be addressed to Docket Clerk, U.S. Environmental Protection Agency, Region 10, SO-155, 1200 Sixth Avenue, Seattle Washington, 98101, and should refer to In Re Alaskan Battery Enterprises Site, Fairbanks, Alaska, U.S. EPA Docket No. 1090-06-13-122.

FOR FURTHER INFORMATION CONTACT: Lori L. Houck, U.S. Environmental Protection Agency, Office of Regional Counsel, SO-155, 1200 Sixth Avenue, Seattle, Washington, 98101, (206) 553-1115.

SUPPLEMENTARY INFORMATION:

In accordance with Section 122(i)(1) of CERCLA, notice is hereby given of a proposed administrative settlement

concerning the Alaskan Battery Enterprises hazardous waste site at 157 Old Richardson Highway, Fairbanks, Alaska. The Site was listed on the National Priorities List (NPL) on March 31, 1989. 54 FR 35502 (March 31, 1989). Subject to review by the public pursuant to this Notice, the agreement has been approved by the United States Department of Justice. Below are listed the 27 parties who have executed the proposed Administrative Order on Consent:

Alascom, Inc.; Brice, Inc.; Conoco, Inc.; Caterpillar, Inc.; Emerson G.M. Diesel of America; Fairbanks TBA, Inc.; Fred Meyer, Inc.; Gene's Inc.; Golden Valley Elec. Assn.; Goldpanner Service, Inc.; Halliburton Services; Jim's College Texaco; MAPCO Alaska Petroleum; Mike's University Chevron, Inc.; Newman Trucking; Northern Commercial Company d/b/a NC Machinery Company; Northern Power Sports; Petrolane; Rent-A-Wreck; Ron's Service and Towing; Russell's Texaco; Safeway Stores; Seekins Ford-Lincoln Mercury, Inc.; Totem Services, Inc.; Tundra Tours; U.S. Postal Service; University of Alaska.

The Environmental Protection Agency (EPA) is entering into this agreement under the authority of sections 122(g) and 107 of CERCLA, 42 U.S.C. 9622(g) and 9607. Section 122(g) authorizes early settlements with *de minimis* parties to allow them to resolve their liabilities at Superfund sites without incurring substantial transaction costs. Under this authority, the agreement proposes to settle with parties in the Alaskan Battery Enterprises case who are responsible for 1% or less of the volume of hazardous substances at the site.

EPA conducted a removal response during the summers of 1988 and 1989. EPA removed approximately 4,000 cubic yards of the most highly contaminated soil from the Site to eliminate a source of contamination which could be ingested and could have further contaminated the groundwater. During the removal action, EPA also removed deeper contamination which had been caused by the use of vans as a method of disposing of liquid household and shop wastes. EPA is currently performing the Remedial Investigation ("RI") and Feasibility Study ("FS"). The Proposed Plan is expected to be published for public comment in November of 1992.

The proposed settlement requires each settling party to pay a fixed sum of money representing their volumetric, generator share of EPA's past costs and the estimated costs of future response actions. The total amount that may be recovered from the proposed settlement is $179,447. The volumetric, generator share for each settling party equals $69.27 times the number of batteries that the settling party disposed of at the Site. Upon full payment, each settling party will receive a release from further civil or administrative liabilities for the Site and statutory contribution protection under section 122(g)(5), 42 U.S.C. 9622(g)(5). The proposed settlement includes a reopener provision which, if remedial response costs exceed current estimates by a factor of 3 ($1,576,440), will enable EPA to void the release from liability and seek each settling party's proportionate share of the excess.

EPA will receive written comments relating to this proposed settlement for a period of thirty (30) days from the date of this publication.

The proposed agreement may be obtained in person or by mail from EPA's Region 10 Office of Regional Counsel, SO-155, 1200 Sixth Avenue, Seattle, Washington, 98101. The Administrative Record for the Alaskan Battery Enterprises Superfund Site may be examined at the Region 10 office, of EPA, Lynn M. Williams, Administrative Records Coordinator, Superfund Branch, 1200 Sixth Avenue, Seattle, Washington, 98101 and at the Fairbanks Information Repository at the offices of the Alaska Department of Environmental Conservation, 1001 Noble Street, suite 350, Fairbanks, Alaska.

Authority: The Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. Sections 9601-9675.

Dana A. Rasmussen,

Regional Administrator.

[FR Doc. 92-17173 Filed 7-21-92; 8:45 am]

BILLING CODE 6560-50-M

[OPPTS-51801; FRL 4080-5]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of 60 such PMNs and provides a summary of each.

DATES: Close of review periods:

P 92-1107, 92-1108, September 20, 1992.

P 92-1130, September 23, 1992.

P 92-1131, 92-1132, 92-1133, 92-1134, 92-1135, 92-1136, 92-1137, September 26, 1992.

P 92-1138, 92-1139, 92-1140, 92-1141, September 27, 1992.

P 92-1143, 92-1144, 92-1145, 92-1146, 92-1147, 92-1148, 92-1149, 92-1150, 92-1151, 92-1152, 92-1154, September 28, 1992.

P 92-1155, 92-1156, October 3, 1992.

P 92-1157, 92-1158, 92-1159, 92-1160, 92-1161, 92-1164, 92-1165, 92-1166, 92-1167, 92-1168, 92-1169, 92-1170, 92-1171, 92-1172, 92-1173, 92-1174, 92-1175, 92-1176, 92-1177, 92-1178, 92-1179, 92-1180, 92-1181, 92-1182, 92-1183, 92-1184, 92-1185, 92-1186, 92-1187, 92-1188, 92-1189, 92-1190, 92-1191, October 4, 1992.

Written comments by:

P 92-1107, 92-1108, August 21, 1992.

P 92-1130, August 24, 1992.

P 92-1131, 92-1132, 92-1133, 92-1134, 92-1135, 92-1136, 92-1137, August 27, 1992.

P 92-1138, 92-1139, 92-1140, 92-1141, August 28, 1992.

P 92-1143, 92-1144, 92-1145, 92-1146, 92-1147, 92-1148, 92-1149, 92-1150, 92-1151, 92-1152, 92-1154, August 29, 1992.

P 92-1155, 92-1156, September 3, 1992.

P 92-1157, 92-1158, 92-1159, 92-1160, 92-1161, 92-1164, 92-1165, 92-1166, 92-1167, 92-1168, 92-1169, 92-1170, 92-1171, 92-1172, 92-1173, 92-1174, 92-1175, 92-1176, 92-1177, 92-1178, 92-1179, 92-1180, 92-1181, 92-1182, 92-1183, 92-1184, 92-1185, 92-1186, 92-1187, 92-1188, 92-1189, 92-1190, 92-1191, September 4, 1992.

ADDRESSES: Written comments, identified by the document control number "(OPPTS-51801)" and the specific PMN number should be sent to: Document Processing Center (TS-790), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Rm. 201ET, Washington, DC, 20460, (202) 260-3532.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (TS-799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E-545, 401 M St., SW., Washington, DC, 20460 (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the TSCA Public Docket Office, NE-G004 at the

above address between 8 a.m. and noon and 1 p.m. and 4 p.m., Monday through Friday, excluding legal holidays.

P 92-1107

Manufacturer. Westvaco Corporation.

Chemical. (G) Modified rosin, hydrocarbon resin.

Use/Production. (S) Printing ink resin. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 5 g/kg species (rat). Static acute toxicity: time LC50 > 10,000 ppm 96H species (pimephales promelas). Eye irritation: slight species (rabbit). Skin irritation: negligible species (rabbit).

P 92-1108

Manufacturer. Westvaco Corporation.

Chemical. (G) Modified rosin, hydrocarbon resin.

Use/Production. (S) Printing ink resin. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 5 g/kg species (rat). Static acute toxicity: time LC50 > 10,000 ppm 96H species (pimephales promelas). Eye irritation: slight species (rabbit). Skin irritation: negligible species (rabbit).

P 92-1130

Importer. Confidential.

Chemical. (G) Acrylic resin.

Use/Import. (S) Printing ink/paint. Import range: Confidential.

P 92-1131

Manufacturer. Confidential.

Chemical. (G) Polyoxy alkylene substituted aromatic azo colorant.

Use/Production. (G) Polymeric colorant. Prod. range: Confidential.

P 92-1132

Manufacturer. Confidential.

Chemical. (G) Polyoxyalkylene substituted aromatic azo colorant.

Use/Production. (G) Polymeric colorant. Prod. range: Confidential.

P 92-1133

Manufacturer. Huls America Inc.

Chemical. (G) Oligomeric triaminoalkyl siloxane.

Use/Production. (S) Surface modification of minerals. Prod. range: Confidential.

P 92-1134

Importer. Confidential.

Chemical. (G) Cyclic phosphate, methacrylic derivative.

Use/Import. (G) Coatings. Import range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 2,000 mg/kg species (rat). Eye irritation: none species (rabbit). Skin irritation: negligible species (rabbit). Mutagenicity: negative.

P 92-1135

Manufacturer. Huls America Inc.

Chemical. (G) Oligomeric diaminoalkyl siloxane.

Use/Production. (S) Surface modification of minerals. Prod. range: Confidential.

P 92-1136

Manufacturer. Huls America Inc.

Chemical. (G) Aqueous epoxy functional silane.

Use/Production. (S) Surface modification of minerals. Prod. range: Confidential.

P 92-1137

Manufacturer. Huls America Inc.

Chemical. (S) Cyclopentyltrichlorosilane.

Use/Production. (S) Intermediate used for manufacture dialkyldialkoxy silane. Prod. range: Confidential.

P 92-1138

Manufacturer. Ashland Chemical, Inc.

Chemical. (G) Polyamide/polyether graft copolymer.

Use/Production. (G) Dispersive use. Prod. range: Confidential.

P 92-1139

Manufacturer. Bostik, Inc.

Chemical. (G) Water based polyurethane.

Use/Production. (G) Open, nondispersive use. Prod. range: Confidential.

P 92-1140

Manufacturer. Bostik, Inc.

Chemical. (G) Water based polyurethane.

Use/Production. (G) Open, nondispersive use. Prod. range: Confidential.

P 92-1141

Importer. Basf Corporation-Fiber Div.

Chemical. (G) Mixed polyacrylate, sodium salt.

Use/Import. (S) Sizing agent. Import range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 5,000 mg/kg species (rat). Static acute toxicity: time LC50 962,100 ppm species (golden orf). Eye irritation: slight species (rabbit). Skin irritation: slight species (rabbit). Skin sensitization: negative species (guinea pig).

P 92-1143

Importer. MTC America, Inc.

Chemical. (S) Styrene with methyl methacrylate, iso-butyl methacrylate and glycidyl methacrylate.

Use/Import. (S) Powder coating. Import range: Confidential.

P 92-1144

Importer. Kaneka America Corporation.

Chemical. (G) Organic silicon polymer.

Use/Import. (S) Industrial adhesives. Import range: Confidential.

Toxicity Data. Mutagenicity: negative.

P 92-1145

Manufacturer. Rohm and Haas Company.

Chemical. (G) Acrylic copolymers.

Use/Production. (G) Dispersive use. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 5 g/kg species (rat). Acute dermal toxicity: LD50 > 2 g/kg species (rabbit). Static acute toxicity: time LC50 76 mg/l species (rainbow trout). Eye irritation: moderate species (rabbit). Skin irritation: slight species (rabbit).

P 92-1146

Manufacturer. Rohm and Haas Company.

Chemical. (G) Acrylic copolymer.

Use/Production. (G) Dispersive use. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 5 g/kg species (rat). Acute dermal toxicity: LD50 > 2 g/kg species (rabbit). Static acute toxicity: time LC50 76 mg/l species (rainbow trout). Eye irritation: moderate species (rabbit). Skin irritation: slight species (rabbit).

P 92-1147

Manufacturer. Rohm and Haas Company.

Chemical. (G) Acrylic copolymers.

Use/Production. (G) Dispersive use. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 5 g/kg species (rat). Acute dermal toxicity: LD50 > 2 g/kg species (rabbit). Static acute toxicity: time LC50 76 mg/l species (rainbow trout). Eye irritation: moderate species (rabbit). Skin irritation: slight species (rabbit).

P 92-1148

Manufacturer. Rohm and Haas Company.

Chemical. (G) Acrylic copolymers.

Use/Production. (G) Dispersive use. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 5 g/kg species (rat). Acute dermal toxicity: LD50 > 2 g/kg species (rabbit). Static acute toxicity: time LC50 76 mg/l species (rainbow trout). Eye irritation: moderate species (rabbit). Skin irritation: slight species (rabbit).

P 92-1149

Manufacturer. Rohm and Haas Company.

Chemical. (G) Acrylic copolymers.

Use/Production. (G) Dispersive use. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 5 g/kg species (rat). Acute dermal toxicity: LD50 > 2 g/kg species (rabbit). Static acute toxicity: time LC50 76 mg/l species (rainbow trout). Eye irritation: moderate species (rabbit). Skin irritation: slight species (rabbit).

P 92-1150

Manufacturer. Rohm and Hass Company.

Chemical. (G) Acrylic copolymers.

Use/Production. (G) Dispersive use. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 5 g/kg species (rat). Acute dermal toxicity: LD50 > 2 g/kg species (rabbit). Static acute toxicity: time LC50 76 mg/l species (rainbow trout). Eye irritation: moderate species (rabbit). Skin irritation: slight species (rabbit).

P 92-1151

Manufacturer. Rohm And Haas Company.

Chemical. (G) Acrylic copolymers.

Use/Production. (G) Dispersive use. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 5 g/kg species (rat). Acute dermal toxicity: LD50 > 2 g/kg species (rabbit). Static acute toxicity: time LC50 76 mg/l species (rainbow trout). Eye irritation: moderate species (rabbit). Skin irritation: slight species (rabbit).

P 92-1152

Manufacturer. Rohm and Haas Company.

Chemical. (G) Acrylic copolymers.

Use/Production. (G) Dispersive use. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 5 g/kg species (rat). Acute dermal toxicity: LD50 > 2 g/kg species (rabbit). Static acute toxicity: time LC50 76 mg/l species (rainbow trout). Eye irritation: moderate species (rabbit). Skin irritation: slight species (rabbit).

P 92-1154

Manufacturer. Rohm and Haas Company.

Chemical. (G) Acrylic copolymers.

Use/Production. (G) Dispersive use. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 5 g/kg species (rat). Acute dermal toxicity: LD50 > 2 g/kg species (rabbit). Static acute toxicity: time LC50 76 mg/l species (rainbow trout). Eye irritation: moderate species (rabbit). Skin irritation: slight species (rabbit).

P 92-1155

Manufacturer. E.I. Du Pont De Nemours & Company.

Chemical. (G) Substituted ethylene polymer.

Use/Production. (G) Binder. Prod. range: Confidential.

P 92-1156

Manufacturer. Amoco Chemical Company.

Chemical. (G) Ternary polyamide.

Use/Production. (G) Preparation injection molded parts. Prod. range: Confidential.

P 92-1157

Manufacturer. Hoechst Celanese Corportion.

Chemical. (G) Trisubstituted naphthalene sulfonic acid.

Use/Production. (S) Powder and liquid formulation of dyestuff for cellulose. Prod. range: 30,000 kg/yr.

P 92-1158

Importer. Confidential.

Chemical. (G) Fluoromethylene-vinylether copolymer.

Use/Import. (S) Paint or coating component. Import range: Confidential.

P 92-1159

Manufacturer. Confidential.

Chemical. (G) Polyester resin.

Use/Production. (G) Open, nondispersive use. Prod. range: Confidential.

P 92-1160

Manufacturer. Confidential.

Chemical. (G) Hydroxyl-terminated saturated polyester resin.

Use/Production. (G) Resin for coating sytstem. Prod. range: Confidential.

P 92-1161

Manufacturer. Confidential.

Chemical. (G) Polyester polyurethane acrylate oligomer.

Use/Production. (S) Resin UV or EB coatings & inks. Prod. range: Confidential.

P 92-1164

Manufacturer. Xerox Corporation.

Chemical. (G) Siloxane grafted fluoroelastomer.

Use/Production. (G) Machine part coating. Prod. range: Confidential.

P 92-1165

Manufacturer. Hoechst Celanese Corporation.

Chemical. (G) Trisubstituted naphthalene disulfonic acid.

Use/Production. (S) Powder of reactive dye for cellulose. Prod. range: 16,000 kg/yr.

P 92-1166

Manufacturer. Hoechst Celanese Corporation.

Chemical. (G) Trisubstituted naphthalene disulfonic acid.

Use/Production. (S) Liquid formulation of reactive dye for cellulose. Prod. range: 60,000 kg/yr.

P 92-1167

Manufacturer. Hoechst Celanese Corporation.

Chemical. (G) Trisubstituted naphthalene disulfonic acid.

Use/Production. (S) Powder and liquid formulation of reactive for cellulose. Prod. range: Confidential.

P 92-1168

Manufacturer. Confidential.

Chemical. (G) Quaternary ammonium salt.

Use/Production. (G) Laundry additive. Prod. range: Confidential.

P 92-1169

Manufacturer. Confidential.

Chemical. (G) Quaternary ammonium salt.

Use/Production. (G) Laundry additive. Prod. range: Confidential.

P 92-1170

Manufacturer. Confidential.

Chemical. (G) Quaternary ammonium salt.

Use/Production. (G) Laundry additive. Prod. range: Confidential.

P 92-1171

Manufacturer. Confidential.

Chemical. (G) Quaternary ammonium salt.

Use/Production. (G) Laundry additive. Prod. range: Confidential.

P 92-1172

Manufacturer. Hoechst Celanese Corporation.

Chemical. (G) Quaternary ammonium salt.

Use/Production. (G) Laundry additive. Prod. range: Confidential.

P 92-1173

Manufacturer. Hoechst Celanese Corporation.

Chemical. (G) Quaternary ammonium salt.

Use/Production. (G) Laundry additive. Prod. range: Confidential.

P 92-1174

Manufacturer. Confidential.

Chemical. (G) Quaternary ammonium salt.

Use/Production. (G) Laundry additive. Prod. range: Confidential.

P 92-1175

Manufacturer. Confidential.

Chemical. (G) Quaternary ammonium salt.

Use/Production. (G) Laundry additive. Prod. range: Confidential.

P 92-1176

Manufacturer. Confidential.

Chemical. (G) Quaternary ammonium salt.

Use/Production. (G) Laundry additive. Prod. range: Confidential.

P 92-1177

Manufacturer. Confidential.

Chemical. (G) Quaternary ammonium salt.

Use/Production. (G) Laundry additive. Prod. range: Confidential.

P 92-1178

Manufacturer. Confidential.

Chemical. (G) Quaternary ammmonium salt.

Use/Production. (G) Laundry additive. Prod. range: Confidential.

P 92-1179

Manufacturer. Confidential.

Chemical. (G) Quaternary ammonium salt.

Use/Production. (G) Laundry additive. Prod. range: Confidential.

P 92-1180

Manufacturer. Confidential.

Chemical. (G) Quaternary ammonium salt.

Use/Production. (G) Laundry additive. Prod. range: Confidential.

P 92-1181

Manufacturer. Confidential.

Chemical. (G) Quaternary ammonium salt.

Use/Production. (G) Laundry additive. Prod. range: Confidential.

P 92-1182

Manufacturer. Confidential.

Chemical. (G) Quaternary ammmonium salt.

Use/Production. (G) Laundry additive. Prod. range: Confidential.

P 92-1183

Manufacturer. Confidential.

Chemical. (G) Quaternary ammonium salt.

Use/Production. (G) Laundry additive. Prod. range: Confidential.

P 92-1184

Manufacturer. Confidential.

Chemical. (G) Quaternary ammonium salt.

Use/Production. (G) Laundry additive. Prod. range: Confidential.

P 92-1185

Manufacturer. Confidential.

Chemical. (G) Quaternary ammonium salt.

Use/Production. (G) Laundry additive. Prod. range: Confidential.

P 92-1186

Manufacturer. Reichhold Chemicals, Inc.

Chemical. (G) Polyester resin.

Use/Production. (S) Powder coatings. Prod. range: Confidential.

P 92-1187

Manufacturer. Reichhold Chemicals, Inc.

Chemical. (G) Polyester resin.

Use/Production. (S) Powder coatings. Prod. range: Confidential.

P 92-1188

Manufacturer. Halocarbon Products Corporation.

Chemical. (S) 2-Fluoroheptachloropropane.

Use/Production. (S) Chemical intermediate. Prod. range: Confidential.

P 92-1189

Manufacturer. Halocarbon Products Corporation.

Chemical. (S) 2-Fluoropropane.

Use/Production. (S) Chemical intermediate. Prod. range: Confidential.

P 92-1190

Importer. Confidential.

Chemical. (G) Polyoxyethylene derivative.

Use/Import. (G) Photographic chemical. Import range: Confidential.

P 92-1191

Importer. Confidential.

Chemical. (G) Biphenol A polyether terephthalate.

Use/Import. (G) Resin for photo copy toner/developer. Import range: Confidential.

Dated: July 17, 1992.

Douglas W. Sellers,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxic.

[FR Doc. 92-17288 Filed 7-21-92; 8:45 am]

BILLING CODE 6560-50-F

[OPPTS-59945; FRL 4080-6]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. Notices for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of 8 such PMN(s) and provides a summary of each.

DATES: Close of review periods:

Y 92-154, 92-155, July 20, 1992.

Y 92-156, 92-157, 92-158, 92-159 July 26, 1992.

Y 92-160, 92-161, July 27, 1992.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (TS-799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E-545, 401 M St., SW., Washington, DC, 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the TSCA Public Docket Office, NE-G004 at the above address between 8 a.m. and noon and 1 p.m. and 4 p.m., Monday through Friday, excluding legal holidays.

Y 92-154

Importer. Confidential.

Chemical. (G) Ethylene glycol terephthalic acid 2-sulfoisophthalic acid monosodium salt copolymer.

Use/Import. (S) Adhesive coating used for polymer film. Import range: Confidential.

Y 92-155

Manufacturer. P.D. George Company.

Chemical. (S) Tall oil fatty acids, trimethylolpropane; isophthalic acid; heat reactive phenolic resin.

Use/Production. (S) Insulating varnish for coating of electrical equipment. Prod. range: 385,555 kg/yr.

Y 92-156

Manufacturer. Confidential.

Chemical. (S) Short oil alkyd resin.

Use/Production. (S) Baked coatings with melamine resins. Prod. range: Confidential.

Y 92-157

Manufacturer. Confidential.

Chemical. (G) Unsaturated polyester resin.

Use/Production. (S) Flexibilizing synthetic marble. Prod. range: Confidential.

Y 92-158

Manufacturer. Confidential.

Chemical. (S) Short oil alkyd resin.

Use/Production. (S) Baked coatings with melamine resins. Prod. range: Confidential.

Y 92-159

Manufacturer. Confidential.

Chemical. (S) Short oil alkyd resin.

Use/Production. (S) Baked coatings with melamine resins. Prod. range: Confidential.

Y 92-160

Manufacturer. Mace Adhesives & Coatings Co., Inc.

Chemical. (G) Diisocyanatoalkane polymer with polyesterdiol, disubstituted alkanoic acid, and alkanediamine, compound with disubstituted alkanamine.

Use/Production. (S) Industrial coatings and commercial finishes. Prod. range: 15,000 kg/yr.

Y 92-161

Manufacturer. Confidential.

Chemical. (G) Poly-carboxylate, amine salt.

Use/Production. (G) Inhibit mineral deposition with crude oil. Prod. range: Confidential.

Dated: July 17, 1992.

Douglas W. Sellers,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 92-17289 Filed 7-21-92; 8:45 am]

BILLING CODE 6560-50-F

FARM CREDIT ADMINISTRATION

Privacy Act of 1974; Establishment of a New System of Records

AGENCY: Farm Credit Administration (FCA).

ACTION: Notice of establishment of a system of records for the investigative files of the Office of Inspector General; request for comments.

SUMMARY: The FCA is establishing a new system of records under the Privacy Act to consist of the investigatory files of the FCA's Office of the Inspector General (OIG). The publication of this system notice is one of the steps required to establish the new system. The new system of records facilitates the OIG's ability to collect, maintain, use, and disclose information pertaining to individuals, thus helping to ensure that the OIG may efficiently and effectively perform its investigations and other authorized duties and activities.

EFFECTIVE DATE: Comments must be received on or before August 21, 1992. Unless changes are made in response to comments received, this action is effective August 21, 1992.

ADDRESSES: Comments may be mailed or delivered (in triplicate) to Jean Noonan, General Counsel, Office of General Counsel, Farm Credit Administration, McLean, Virginia 22102-5090. Copies of all communications will be available for examination by interested parties in the Office of General Counsel, Farm Credit Administration.

FOR FURTHER INFORMATION CONTACT:

Elizabeth M. Dean, Counsel to the Inspector General, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4030,

or

Rebecca S. Orlich, Senior Attorney, Regulatory and Legislative Law Division, Office of General Counsel, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4020, TDD (703) 883-4444.

SUPPLEMENTARY INFORMATION: As required by 5 U.S.C. 552a(3)(4) and (11), the FCA is notifying the public of the establishment of a new system of records in the FCA's OIG. This system is being established as part of the formal creation of an OIG by action dated January 22, 1989, and the appointing of the FCA's Inspector General on the same date, under the authority of the 1988 amendments to the Inspector General Act of 1978. See Pub. L. No. 100-504, amending Pub. L. No. 95-452; 5 U.S.C. app. 3. Among the OIG's statutory duties are the prevention and detection of fraud, waste, and abuse relating to the agency's programs and operations, through the conduct of audits and investigations and the preparation of reports to the agency's Chairman and to Congress.

An advance notice of the establishment of a system of records, together with a request for comments, was published in the Federal Register on February 21, 1992, 57 FR 6221. A related proposed amendment to the FCA regulations to exempt this system of records from certain requirements of the Privacy Act was published on March 13, 1992, 57 FR 8851.

The system of records being established consists of investigatory files compiled and maintained by the OIG. Due to the law enforcement nature of these records, the proposed system is exempt from certain provisions of the Privacy Act, including disclosure to individuals who are the subject of a record in the system. See 5 U.S.C. 552a(j)(2) and (k)(2). The exempt status of the system of records is the subject of a final rule, amending FCA regulation 12 CFR 603.355, which specifies the FCA systems of records that are exempt from certain provisions of the Privacy Act. The FCA adopted this final rule at its meeting on July 16, 1992. Pursuant to 12 U.S.C. 2252(c)(1), the final rule will be effective 30 days after the date of its publication in the Federal Register during which either or both Houses of Congress are in session.

The FCA received two comments on the advance notice. the Farm Credit council, a trade association representing Farm Credit System institutions, requested that the FCA clarify that the exemptions will not take effect until and unless the final rule is issued. The FCA Board affirms that the exemptions will not apply to this system of records until the final rule becomes effective.

The Office of Management and Budget (OMB) suggested that revisions be made to routine uses (1), (2), (3), (4), (6), (8), (9), (11) and (12). Most of the suggestions involved narrowing the scope of the use; re-wording so that each numbered routine use specifies only a single type of disclosure, its recipient, and purpose; clarifying certain language; and deleting routine uses that duplicate existing Privacy Act exceptions. The OMB also suggested that a paragraph be added regarding disclosures to consumer reporting agencies. The FCA Board believes that such revisions are appropriate and has therefore made changes to the previously published advance notice. These revised routine uses are described below.

Routine use (1)(b) has been narrowed to allow disclosure only where the record collected by the OIG is necessary and relevant to a particular licensing decision. The FCA will also have to ensure that the records are timely, relevant, accurate and complete enough to assure fairness to the individual affected by the licensing decision.

The phrase "but only" has been inserted before "to the extent necessary" in routine use (2) to emphasize the narrowness of this exception.

Routine use (3) has eliminated all references to disclosing records containing information relevant to an

agency's interest for employment purposes or for security clearance reasons. The reasoning behind this elimination is that an agency should obtain written consent in cases where it is the decision-making agency, and in cases where another agency knows the FCA has information, such other agency can make a request for the information pursuant to 5 U.S.C. 552a(b)(7) or by obtaining a waiver. Routine uses described in (3)(d) have been incorporated into the more generalized routine uses (6) and (7) concerning disclosures to an adjudicative body or an administrative tribunal during litigation or administrative proceedings.

Proposed routine use (4) has been withdrawn because the uses are already covered by other routine uses or are exceptions under the Privacy Act.

Proposed routine use (6) has been revised to eliminate the disclosure of information to any authorized agency component of the FCA, since this is already an exception allowed by the Privacy Act. See 5 U.S.C. 552a(b)(1). Also the phrase "regarding further disclosure by parties" has been eliminated since subsequent disclosures by the Department of Justice will be governed by its own disclosure rules

The FCA, in response to OMB's comment, has limited each routine use to one subject and has eliminated routine uses already covered by other routine uses or by exceptions under the Privacy Act. Renumbered routine use (5) has been limited to instances where the Department of Justice represents the FCA. Renumbered routine uses (6) and (7) cover FCA's involvement in litigation where the Department of Justice would not necessarily represent it. Proposed routine use (6)(b) has been totally eliminated since it is not normally necessary to disclose documents to obtain advice concerning accessibility of a record or information.

Renumbered routine use (8) now requires a constituent requests to be in writing. Renumbered routine use (10) clarifies that the FCA may disclose information resulting from an OIG investigation of the way in which an FCA contractor-operated program is being run to the contractor so that the contractor may take corrective action.

Proposed routine use (11) has been eliminated since section (b)(11) of the Privacy Act allows a disclosure exception for an order of the court. Case law has held that agencies may not circumvent the requirement for a judge to sign the subpoena or order for disclosure of records by having a routine use which allows disclosure without such deliberation by a judge. Proposed routine use (12) has also been withdrawn since it is not necessary to transfer documents to OMB in order to obtain advice.

SYSTEM NAME:

FCA-18

Inspector General Investigative Files—FCA.

SECURITY CLASSIFICATION:

Not applicable.

SYSTEM LOCATION:

Office of the Inspector General (OIG), Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102-5090.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Subjects of OIG investigations relating to the programs and operations of the Farm Credit Administration. Subject individuals include, but are not limited to, current and former employees; current and former agents or employees of contractors or subcontractors, as well as current and former contractors and subcontractors in their personal capacity, where applicable; and other individuals whose actions affect the FCA, its programs or operations. Businesses, proprietorships, and corporations are not covered by this system.

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence relating to the investigation; internal staff memoranda; copies of subpoenas issued during the investigation, affidavits, statements from witnesses, transcripts of testimony taken in the investigation, and accompanying exhibits; documents, records, or copies obtained during the investigation; interview notes, investigative notes, staff working papers, draft materials, and other documents and records relating to the investigation; opening reports, progress reports, and closing reports; and other investigatory information or data relating to alleged or suspected criminal, civil, or administrative violations or similar wrongdoing by subject individuals.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Inspector General Act Amendments of 1988, Pub. L. No. 100-504, amending the Inspector General Act of 1978, Pub. L. No. 95-452, 5 U.S.C. app. 3.

PURPOSE(S):

To document the conduct and outcome of investigations; to report results of investigations to other components of the FCA or other agencies and authorities for their use in evaluating their programs and imposition of criminal, civil, or administrative sanctions; to report the results of investigations to other agencies or other regulatory bodies for an action deemed appropriate, and for retaining sufficient information to fulfill reporting requirements; and to maintain records related to the activities of the Office of the Inspector General.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures generally permitted under 5 U.S.C. 552a(b), these records or information in these records, either by itself or in combination with other information within the agency's possession, may specifically be disclosed pursuant to 5 U.S.C. 552a(b)(3) as follows, provided that no routine use specified herein shall be construed to limit or waive any other routine use specified herein:

(1) When a record in a system of records, either by itself or in conjunction with other information:

(a) Indicates a violation or potential violation of law, whether criminal, civil, or regulatory in nature, disclosure may be permitted of that record to the governmental agency, whether Federal, state, local or foreign, that is charged with investigating violations of or enforcing compliance with the law.

(b) Contains information relevant to the qualifications or fitness of an individual who is licensed or seeking to be licensed, disclosure may be permitted of that record to the responsible licensing authority, provided the records are relevant and necessary in the particular licensing decision and reasonable steps are taken to ensure that the records are timely, relevant, accurate and complete enough to assure fairness to the individual affected by the licensing decision.

(2) When the FCA OIG is conducting an investigation or audit, records may be disclosed to any source, but only to the extent necessary to secure from that source information relevant to and sought in furtherance of the investigation or audit.

(3) To agencies, offices, or establishments of the executive, legislative or judicial branches of the Federal or state government when a request is in hand and where the records or information in those records is relevant and necessary to a decision with regard to disciplinary or other administrative action (excluding a decision on hiring) concerning an employee and reasonable steps are

taken to ensure that the records are timely, relevant, accurate and complete enough to assure fairness to the individual affected by the disciplinary or administrative action.

(4) To independent auditors or other private firms with which the Office of Inspector General has contracted to carry out an independent audit or investigation or to analyze, collate, aggregate or otherwise refine data collected in the system of records, subject to the requirement that such contractors shall maintain Privacy Act safeguards with respect to such records.

(5) To the Department of Justice for use in litigation when either (i) the FCA, or any component thereof, (ii) any employee of the FCA in his or her official capacity, (iii) any employee of the FCA in his or her individual capacity where the Department of Justice has agreed to present the employee or, (iv) the United States, where the FCA determines that litigation is likely to affect the FCA or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the FCA to be relevant and necessary to litigation, provided that in each case the FCA determines that disclosure of the records to the Department of Justice is compatible with the purpose for which the records were collected.

(6) To a court, magistrate, or other administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, administrative proceedings, or settlement negotiations, or in connection with criminal law proceedings, when the FCA is a party to the litigation or proceeding and it determines it is relevant and necessary to the litigation or proceeding.

(7) To a court or other adjudicative body before which the FCA is authorized to appear, when either (i) the FCA, or any component thereof, (ii) any employee of the FCA in his or her official capacity, (iii) any employee of the FCA in his or her individual capacity, where the FCA determines that litigation is likely to affect the FCA or any of its components, is a party to litigation, and the FCA determines that disclosure of the records to a court or other adjudicative body is compatible with the purpose for which the records were collected.

(8) To the National Archives and Records Administration for records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

(9) To a Congressional office from the record of a subject individual in response to an inquiry from the Congressional office made at the written request of that individual, but only to the extent that the record would be legally accessible to that individual.

(10) To an FCA contractor when a contractor-operated program has been subject to OIG investigation which was uncovered personnel problems so that personnel problems can be corrected by the contractor.

(11) To debt collection contractors for the purpose of collecting debts owned to the Government, as authorized under the Debt Collection Act Of 1982, 31 U.S.C. 3718, and subject to applicable Privacy Act safeguards.

DISCLOSURES TO CONSUMER REPORTING AGENCIES:

Disclosures may be made from this system, pursuant to 5 U.S.C. 552a(b)(12), to consumer reporting agencies as defined in the Fair Credit Reporting Act, 15 U.S.C. 1681a (f) or the Federal Claims Collection Act of 1966, 31 U.S.C. 3701 (a)(3), in accordance with section 3711(f) of title 31.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The OIG Investigative Files consist of paper records maintained in file folders, cassette tapes of interviews and data maintained on computer diskettes. The folders, diskettes and cassette tapes are stored in file cabinets in the OIG.

RETRIEVABILITY:

The records are retrieved by the name of the subject of the investigation or by a unique control number assigned to each investigation.

SAFEGUARDS:

Records are maintained in lockable file cabinets in lockable rooms. Access is restricted to individuals whose duties require access to the records. File cabinets and rooms are locked during non-duty hours.

RETENTION AND DISPOSAL:

As prescribed in General Records Schedule 22, item 1b, OIG Investigative Files are destroyed 10 years after a case is closed. Cases that are unusually significant for documenting major violations of criminal law or ethical standards are offered to the National Archives for permanent retention.

SYSTEM MANAGER AND ADDRESS:

Inspector General, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.

NOTIFICATION PROCEDURE:

By mailing or delivering a written request bearing the individual's name, return address, and signature, addressed as follows: Privacy Act Request, Privacy Act Officer, Office of Congressional and Public Affairs, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.

RECORD ACCESS PROCEDURE:

Same as above.

CONTESTING RECORD PROCEDURE:

Same as above.

RECORD SOURCE CATEGORIES:

Employees or other individuals on whom the record is maintained, non-target witnesses, FCA and non-FCA records, to the extent necessary to carry out OIG investigations authorized by 5 U.S.C. app. 3.

SYSTEM(S) EXEMPTED FROM CERTAIN PROVISIONS OF THE PRIVACY ACT:

Pursuant to 5 U.S.C. 552a(j)(2), records in this system are exempt from the provisions of 5 U.S.C. 552a, except subsections (b), (c)(1) and (2), (e)(4)(A) through (F), (e)(6), (7), (9), (10), and (11), and (i), and corresponding provisions of 12 CFR 603.355, to the extent a record in the system of records was compiled for criminal law enforcement purposes.

Pursuant to 5 U.S.C. 552a(k)(2), the system is exempt from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I) and (f), and the corresponding provisions of 12 CFR 603.355, to the extent the system of records consists of investigatory material compiled for law enforcement purposes, other than material within the scope of the exemption at 5 U.S.C. 552a(j)(2). *See* FCA regulation 12 CFR 603.355, as amended.

Dated: July 16, 1992.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 92–17280 Filed 7–21–92; 8:45 am]

BILLING CODE 6705–01

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

July 14, 1992.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, Downtown Copy Center, 1990 M Street, NW., suite 640, Washington, DC 20036, (202) 452–1422. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632–7513. Persons wishing to comment on this information collection should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395–4814.

OMB Number: 3060–0057.

Title: Application for Equipment Authorization.

Form Number: FCC Form 731.

Action: Revised collection.

Respondents: Businesses or other for-profit.

Frequency of Response: On occasion reporting.

Estimated Annual Burden: 8,600 responses; 24 hours average burden per response; 206,400 hours total annual burden.

Needs and Uses: Present Commission rules require approval of equipment regulated under certain part 15 and part 18 rule sections (see item 27 of SF–83) prior to marketing, based on a showing of compliance to technical standards established in the Rules for each device operated under the applicable Rule part. Rules governing certain equipment operating in the licensed services also require equipment authorization as established in the procedural Rules in part 2. Such a showing of compliance aids in controlling potential interference to radio communications, and the data gathered, as is necessary, may be used for investigating complaints of harmful interference. Revision of the form is required in order to incorporate fee processing information, and to clarify and simplify other items in order to reduce the public burden. The information gathered will be used by the Commission to determine compliance of the proposed equipment with the Commission's Rules. Following authorization of the equipment for marketing, the information may be used to determine that the operation of the equipment is consistent with the information supplied at the time of grant, and that the equipment marketed complies with the terms of the equipment authorization. The information collected is essential to controlling potential interference to radio communications.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92–17207 Filed 7–21–92; 8:45 am]

BILLING CODE 6712–01–M

[General Docket No. 91–2]

Information on Application Filing Procedures for the Interactive Video and Data Service

On January 16, 1992, the Commission adopted a Report and Order (R&O) in GEN Docket No. 91–2 establishing an Interactive Video and Data Service (IVDS) under part 95 of its Rules (47 CFR part 95). In the R&O the Commission stated that it would announce by Public Notice the date on which it would begin accepting applications for IVDS system licenses as well as other pertinent information concerning licensing IVDS systems. The purpose of this Public Notice is to establish an IVDS application filing window and explain the filing procedures necessary for filing applications for an IVDS system license.

Because there appears to be a substantial number of entities interested in applying for IVDS licenses, we will open up the 734 IVDS service areas or markets in stages. To get some idea of the interest in IVDS, the first stage will be limited to a single service area, service area #1 (New York, NY/NJ). For a description of the service areas see the Commission's January 24, 1992, Public Notice, Report No 92–40.

Applications for an IVDS license for the New York service area must be received at the official filing location listed herein during the three-day filing period beginning August 18, 1992, and ending August 20, 1992. Applications received before August 18, or after August 20, 1992, will be dismissed as untimely filed. The back-up filing procedure and the extra day policy do not apply to IVDS applications.[1]

Note: Applicants may have an interest in only one application in each service area.

All applications must be filed on FCC Form 155 and must be accompanied by a separate check made out to the Federal Communications Commission or FCC in the amount of $1,400.00. Failed payment or postdated checks will result in the application being dismissed with prejudice. In Section I of Form 155, the "Applicant Name" block must include the applicant's name (either typed or printed) followed by the signature (original) of an individual authorized to sign the application. The mailing address should be the address to which the applicant wishes official correspondence sent. The number of the service area being applied for (in this case "001") must be specified in the box labeled "Call Sign". The fee type code entered in Column (A) must be "PAI", the fee multiple in Column (B) must be "40", and the fee due in column (C) must be $1,400.00. Each individual application (Form 155) and accompanying check ($1,400.00) must be in an individual sealed envelope and properly addressed (see mail in address). Multiple applications, properly packaged, may be delivered in one larger, properly addressed container.

The Commission's official filing location for these applications is Mellon Bank in Pittsburgh, PA. Applications may be delivered to Mellon Bank in one of two ways, either mailed in or walked in.

Mail-ins

Filings mailed in must be mailed to: Federal Communications Commission, Interactive Video and Data Service, P.O. Box 358365, Pittsburgh, PA 15251–5365.

(This address must be used on the individually sealed envelopes.)

Walk-ins

Pursuant to the provisions of 47 CFR 0.401(b)(2), applications may be hand-delivered. Applications hand-delivered must be in a sealed envelope with the mail-in address specified above on its face. A separate envelope is needed for each application and accompanying check. Hand-delivered applications must be delivered to One Mellon Bank Center, 500 Grant Street, Pittsburgh, PA. 15258 anytime between 12:01 a.m. August 18, 1992, and 11:59 p.m. August 20, 1992.

The street entrance to the Window Filing location is on the Grant Street side of the building (across from the US Air ticket office). Signs will be posted in both One Mellon Bank Center and Three Mellon Bank Center indicating the Filing Window location. The "deliverer" should proceed directly to the street entrance described above and identify himself (herself) as having applications for the IVDS filing window. If a copy is proffered for stamping, one receipt only

[1] The back-up filing procedure enables certain applicants to file late if they follow certain procedures and if their applications are lost or delayed in transit to Pittsburgh, Pennsylvania. The extra day policy allows certain applicants to file one day after the filing deadline. These policies, however, only apply to time critical, feeable applications previously filed in Washington, DC and IVDS applications, which are new, have never been filed in Washington. Thus, if an IVDS application is received in Pittsburgh on August 21, 1992, the day after the filing window closes, or thereafter (regardless of the reason for delay), the application will be dismissed as untimely filed.

will be date stamped per application and returned.

Caution: The filing instructions incorporated in this Public Notice are only in effect for the purposes stated herein. These procedures override any other procedures that may be set forth in the Commission's Rules. Failure to follow the filing procedures specified herein will render an application unacceptable for filing. Such an application will be dismissed with prejudice.

After the filing window has closed the Commission will issue a Public Notice as soon as feasible listing the applications filed for the New York service area. In the event the Commission receives more than two acceptable applications for an IVDS system license for this particular service area, all the applications for this service area will be considered mutually exclusive. The Commission will use a lottery conducted in accordance with 47 CFR 1.972 to choose among mutually exclusive application. If a lottery is necessary, the Commission will announce by Public Notices (1) when a lottery will be held and (2) the lottery winners (tentative selectees). Tentative selectees will then have two business days from the date of the Public Notice announcing the winners to file a FCC Form 574 (plus required showings) amending their original application. The burden will be on the tentative selectees to provide all necessary information. If for some reason one or both of the tentative selectees' applications are dismissed, the Commission will open another filing window for that service area.

While the Commission intends to open all 734 services areas as quickly as possible, it will not issue system licenses until the first IVDS transmitter has been type accepted for operation in this service. Moreover, it is important to remember that an applicant that has been awarded an IVDS system license must meet certain construction benchmarks or automatically lose the license. Further an IVDS system licensee is prohibited from transferring the license until the 5-year construction benchmark has been met.

For further information contact Consumer Assistance Branch, 717–337–1212.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92–17315 Filed 7–20–92; 12:01 pm]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

City of Oakland et al; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–200690.

Title: Port of Oakland/Stevedoring Services of America Terminal Management Agreement.

Parties: City of Oakland ("Port"), Stevedoring Services of America ("SSA").

Synopsis: The Agreement provides for SSA to manage and operate the Port's Charles P. Howard Terminal, including its three container cranes, for a period of five years.

Dated: July 16, 1992.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 92–17234 Filed 7–21–92; 8:45 am]

BILLING CODE 6730–01–M

Security for the Protection of the Public Financial Responsibility To Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Issuance of Certificate (Casualty)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of section 2, Public Law 89–777 (46 U.S.C. 817(d)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended:

Seabourn Cruise Line Limited and Seabourn Maritime Management A/S, 55 Francisco Street, San Francisco, CA 94133.

Vessels: SEABOURN PRIDE and SEABOURN SPIRIT.

Dated: July 16, 1992.

Joseph C. Polking,

Secretary.

[FR Doc. 92–17232 Filed 7–21–92; 8:45 am]

BILLING CODE 6730–01–M

Security for the Protection of the Public Indemnification of Passengers for Nonperformance of Transportation; Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of section 3, Public Law 89–777 (46 U.S.C. 817(e)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended:

Seabourn Cruise Line Limited and Seabourn Maritime Management A/S, 55 Francisco Street, San Francisco, CA 94133.

Vessels: SEABOURN PRIDE AND SEABOURN SPIRIT.

Dated: July 16, 1992.

Joseph C. Polking,

Secretary.

[FR Doc. 92–17233 Filed 7–21–92; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Larry Neil Boatright, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 11, 1992.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Larry Neil Boatright, Keyesport, Illinois, and Paul Wayne Jones, Murphysboro, Illinois; to acquire an additional 42.41 percent of the voting shares of Keyesport Bancshares, Inc., Keyesport, Illinois, for a total of 68.70 percent, and thereby indirectly acquire State Bank of Keyesport, Keyesport, Illinois.

B. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Patrick T. Rooney, Oklahoma City, Oklahoma; to acquire an additional 34.81 percent of the voting shares of Charter Bancshares, Inc., Oklahoma City, Oklahoma, for a total of 51.68 percent.

Board of Governors of the Federal Reserve System, July 16, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-17223 Filed 7-21-92; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL RESERVE SYSTEM

Dunlap Iowa Holding Co.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than August 14, 1992.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Dunlap Iowa Holding Co., Dunlap, Iowa; to acquire 100 percent of the voting shares of Soldier Valley Financial Services, Inc., Soldier, Iowa, and thereby indirectly acquire Soldier Valley Savings Bank, Soldier, Iowa.

Board of Governors of the Federal Reserve System, July 16, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-17222 Filed 7-21-92; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 92N-0298]

Pharmafair, Inc.; Withdrawal of Approval of Three Abbreviated New Drug Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of three abbreviated new drug applications (ANDA's) held by Pharmafair, Inc., 110 Kennedy Dr., Hauppauge, NY 11788. Pharmafair has agreed in writing to permit FDA to withdraw approval of the applications, and has waived its opportunity for a hearing. This action stems from the discovery of untrue statements, discrepancies, and omissions concerning data used to obtain approval of the applications.

EFFECTIVE DATE: July 22, 1992.

FOR FURTHER INFORMATION CONTACT: Megan L. Foster, Center for Drug Evaluation and Research (HFD-366), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-295-8041.

SUPPLEMENTARY INFORMATION: Recently, FDA became aware of untrue statements, discrepancies, and omissions concerning the data used to support approval of the following ANDA's held by Pharmafair:

ANDA 70–485; Betamethasone Valerate Cream 0.1%;

ANDA 70–486; Betamethasone Valerate Ointment 0.1%; and

ANDA 88–837; Prednisolone Acetate 0.2% U.S.P. with Sulfacetamide Sodium Ophthalmic Suspension (Sterile).

After careful review of inspectional findings, the agency determined that there was sufficient justification to initiate proceedings to withdraw approval of the products listed above. Pharmafair was notified in writing of these determinations, and, in accordance with 21 CFR 314.150(d), was offered an opportunity to permit FDA to withdraw the applications. Subsequently, in letters dated June 10, 1992, Pharmafair requested withdrawal of the ANDA's, thereby waiving its opportunity for a hearing.

Therefore, under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)), and under authority delegated to the Director of the Center for Drug Evaluation and Research (21 CFR 5.82), approval of the ANDA's listed above, and all amendments and supplements thereto, is withdrawn effective July 22, 1992. Distribution of these products in interstate commerce without an approved application is illegal and subject to regulatory action.

Dated: July 14, 1992.

Carl C. Peck,

Director, Center for Drug Evaluation and Research.

[FR Doc. 92–17310 Filed 7–21–92; 8:45 am]

BILLING CODE 4160–01–F

National Institutes of Health

National Eye Institute; Meeting of the National Advisory Eye Council

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Advisory Eye Council (NAEC) on September 8, in Building 31C, Conference Room 6, National Institutes of Health, Bethesda, Maryland.

The NAEC meeting will be open to the public on September 8 from 8 a.m. until approximately 10 a.m. for discussion of program policies and issues. Attendance by the public will be limited to space available.

In accordance with provisions set forth in Section 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the Council meeting will be closed to the public from approximately 10 a.m. on September 8 until adjournment for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Lois DeNinno, Committee Management Officer, NEI, Building 31, room 6A04, NIH, Bethesda, Maryland 20892, (301) 496–9110, will provide a summary of the meeting, roster of committee members, and substantive program information upon request.

(Catalog of Federal Domestic Assistance Programs, Nos. 93.867, Retinal and Choroidal Diseases Research; 93.868, Anterior Segment Diseases Research; and 93.871, Strabismus, Amblyopia and Visual Processing; National Institutes of Health)

Dated: July 10, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92–17185 Filed 7–21–92; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Meetings

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the following Heart, Lung, and Blood Special Emphasis Panel.

This meeting will be open to the public to discuss administrative details relating to Special Emphasis Panel (SEP) business for approximately one half hour at the beginning of the first session of each meeting. Attendance by the public will be limited to space available. This meeting will be closed thereafter in accordance with the provisions set forth in section 552(b)(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Office of Committee Management, National Heart, Lung, and Blood Institute, Westwood Building, room 7A15, National Institutes of Health, Bethesda, Maryland 20892, telephone 301–496–7548, will furnish a summary of the meeting and rosters of panel members. Substantive program information may be obtained from each Scientific Review Administrator whose telephone number is provided. Since it is necessary to schedule meetings well in advance, it is suggested that anyone planning to attend a meeting contact the Scientific Review Administrator to confirm the exact date, time and location.

Name of Panel: NHLBI SEP on Demonstration & Education Grant Applications.

Scientific Review Administrator: Dr. C. James Scheirer, Telephone 301–496–7363.

Dates of Meeting: July 29, 1992.

Place of Meeting: Conference Call: Westwood Building, Room 548, Bethesda, Maryland.

Time of Meeting: 1 p.m.

(Catalog of Federal Domestic Assistance Program Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: July 10, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92–17177 Filed 7–21–92; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Meetings

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the following Heart, Lung, and Blood Special Emphasis Panel.

The meeting will be open to the public to discuss administrative details relating to Special Emphasis Panel (SEP) business for approximately one half hour at the beginning of the meting. Attendance by the public will be limited to space available. The meeting will be closed thereafter in accordance with the provisions set forth in sec. 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and sec. 10(d) of Public Law 92–463, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Office of Committee Management, National Heart, Lung, and Blood Institute, Westwood Building, room 7A15, National Institutes of Health, Bethesda, Maryland 20892, telephone 301–496–7548, will furnish a summary of the meeting and roster of panel members. Substantive program information may be obtained from each Scientific Review Administrator whose telephone number is provided. Since it is necessary to schedule meetings well in advance, it is suggested that anyone

planning to attend a meeting contact the Scientific Review Administrator to confirm the exact date, time and location.

Name of Panel: NHLBI SEP on Mechanisms Underlying Coronary Heart Disease in Blacks.

Scientific Review Administrator: Dr. Eric H. Brown, telephone 301–496–8391.

Dates of Meeting: July 30–31, 1992.

Place of Meeting: Holiday Inn (Crowne Plaza), Rockville, MD.

Time of Meeting: 8 p.m.

(Catalog of Federal Domestic Assistance Program Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: July 10, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92–17184 Filed 7–21–92; 8:45 am]

BILLING CODE 4140–01–M

National, Heart, Lung, and Blood Institute; Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the following Heart, Lung, and Blood Special Emphasis Panel.

This meeting will be open to the public to discuss administrative details relating to Special Emphasis Panel (SEP) business for approximately one half hour at the beginning of the first session of the meeting. Attendance by the public will be limited to space available. This meeting will be closed thereafter in accordance with the provisions set forth in sec. 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and sec. 10(d) of Public Law 92–463, for the review, discussion and evaluation of individual contract proposals. These contracts and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Office of Committee Management, National Heart, Lung and Blood Institute, Westwood Building, room 7A15, National Institutes of Health, Bethesda, Maryland 20892, telephone 301–496–7548, will furnish meeting information upon request. Since it is necessary to schedule meetings well in advance, it is suggested that anyone planning to attend the meeting contact the Scientific Review Administrator to confirm the exact date, time, and location.

Name of Panel: NHLBI SEP on Peripheral Arterial Disease—Pilot Study Coordinating Center.

Scientific Review Administrator: Dr. C. James Scheirer, telephone 301–496–7363.

Dates of Meeting: August 17–18, 1992.

Place of Meeting: Crystal City Marriott, Arlington, Virginia.

Time of Meeting: 8 p.m.

(Catalog of Federal Domestic Assistance Program Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: July 10, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92–17183 Filed 7–21–92; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N–92–3473]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Jennifer Main, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notice lists the following information:

(1) The title of the information collection proposal;

(2) The office of the agency to collect the information;

(3) The description of the need for the information and its proposed use;

(4) The agency form number, if applicable;

(5) What members of the public will be affected by the proposal;

(6) How frequently information submissions will be required;

(7) An estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response;

(8) Whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and

(9) The names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: July 8, 1992.

John T. Murphy,

Director, Information Resources, Management Policy and Management Division.

Submission of Proposed Information Collection to OMB

Proposal: Comprehensive Housing Affordability Strategy (CHAS).

Office: Community Planning and Development.

Description of the Need for the Information and its Proposed Use: States and units of local government are required to submit to HUD and to implement a Comprehensive Housing Affordability Strategy (CHAS) as a condition for receiving funds made available under Title II of the National Affordability Housing Act, the United States Housing Act of 1937, the Housing and Community Development Act of 1974, and the Stewart B. McKinney Homeless Assistance Act.

Form Number: HUD–40090 AND HUD–40091.

Respondents: State or Local Governments.

Frequency of Submission: Annually and Recordkeeping.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD–40090/40091	950		1		483.9		459,700
Recordkeeping	950		1		21.9		20,850

Total Estimated Burden Hours: 480,550.

Status: Reinstatement.

Contact: Cliff Taffet, HUD, (202) 708–2470, Jennifer Main, OMB, (202) 395–6880.

Dated: July 8, 1992.

[FR Doc. 92–17200 Filed 7–21–92; 8:45 am]

BILLING CODE 4210–01–M

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N–92–3474; FR 3309–N–01]

Mortgage and Loan Insurance Programs Under the National Housing Act—Debenture Interest Rates

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, (HUD).

ACTION: Notice of change in debenture interest rates.

SUMMARY: This notice announces changes in the interest rates to be paid on debentures issued with respect to a loan or mortgage insured by the Federal Housing Commissioner under the provisions of the National Housing Act (the "Act"). The interest rate for debentures issued under section 221(g)(4) of the Act during the six-month period beginning July 1, 1992, is 7½ percent. The interest rate for debentures issued under any other provision of the Act is the rate in effect on the date that the commitment to insure the loan or mortgage was issued, or the date that the loan or mortgage was endorsed (or initially endorsed if there are two or more endorsements) for insurance, whichever rate is higher. The interest rate for debentures issued under these other provisions with respect to a loan or mortgage committed or endorsed during the six-month period beginning July 1, 1992, is 8 percent.

FOR FURTHER INFORMATION CONTACT: Fred E. McLaughlin, Financial Policy Division, room 9132, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone (202) 708–4325 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Section 224 of the National Housing Act (24 U.S.C. 1715o) provides that debentures issued under the Act with respect to an insured loan or mortgage (except for debentures issued pursuant to section 221(g)(4) of the Act) will bear interest at the rate in effect on the date the commitment to insure the loan or mortgage was issued, or the date the loan or mortgage was endorsed (or initially endorsed if there are two or more endorsements) for insurance, whichever rate is higher. This provision is implemented in HUD's regulations at 24 CFR 203.405, 203.479, 207.259(e)(6), and 220.830. Each of these regulatory provisions states that the applicable rates of interest will be published twice each year as a notice in the **Federal Register.**

Section 224 further provides that the interest rate on these debentures will be set from time to time by the Secretary of HUD, with the approval of the Secretary of the Treasury, in an amount not in excess of the interest rate determined by the Secretary of the Treasury pursuant to a formula set out in the statute.

The Secretary of the Treasury (1) has determined, in accordance with the provisions of section 224, that the statutory maximum interest rate for the period beginning July 1, 1992, is 8 percent and (2) has approved the establishment of the debenture interest rate by the Secretary of HUD at 8 percent for the six-month period beginning July 1, 1992. This interest rate will be the rate borne by debentures issued with respect to any insured loan or mortgage (except for debentures issued pursuant to section 221(g)(4)) with an insurance commitment or endorsement date (as applicable) within the last six months of 1992.

For convenience of reference, HUD is publishing the following chart of debenture interest rates applicable to mortgages committed or endorsed since January 1, 1980:

Effective interest rate	On or after	Prior to
9½	Jan. 1, 1980	July 1, 1980.
9⅞	July 1, 1980	Jan. 1, 1981.
11¾	Jan. 1, 1981	July 1, 1981.
12⅞	July 1, 1981	Jan. 1, 1982.
12¾	Jan. 1, 1982	Jan. 1, 1983.
10¼	Jan. 1, 1983	July 1, 1983.
10⅜	July 1, 1983	Jan. 1, 1984.
11½	Jan. 1, 1984	July 1, 1984.
13⅜	July 1, 1984	Jan. 1, 1985.
11⅝	Jan. 1, 1985	July 1, 1985.
11⅛	July 1, 1985	Jan. 1, 1986.
10¼	Jan. 1, 1986	July 1, 1986.
8¼	July 1, 1986	Jan. 1, 1987.
8	Jan. 1, 1987	July 1, 1987.
9	July 1, 1987	Jan. 1, 1988.
9⅛	Jan. 1, 1988	July 1, 1988.
9⅜	July 1, 1988	Jan. 1, 1989.
9¼	Jan. 1, 1989	July 1, 1989.
9	July 1, 1989	Jan. 1, 1990.
8⅛	Jan. 1, 1990	July 1, 1990.
9	July 1, 1990	Jan. 1, 1991.
8¾	Jan. 1, 1991	July 1, 1991.
8½	July 1, 1991	Jan. 1, 1992.
8	Jan. 1, 1992	July 1, 1992.
8	July 1, 1992	

Section 221(g)(4) of the Act provides that debentures issued pursuant to that paragraph (with respect to the assignment of an insured mortgage to the Secretary) will bear interest at the "going Federal rate" in effect at the time the debentures are issued. The term "going Federal rate", as used in that paragraph, is defined to mean the interest rate that the Secretary of the Treasury determines, pursuant to a formula set out in the statute, for the six-month periods of January through June and July through December of each year. Section 221(g)(4) is implemented in the HUD regulations at 24 CFR 221.790.

The Secretary of the Treasury has determined that the interest rate to be borne by debentures issued pursuant to section 221(g)(4) during the six-month period beginning July 1, 1992, is 7½ percent.

HUD expects to publish its next notice of change in debenture interest rates in January 1992.

The subject matter of this notice falls within the categorical exclusion from HUD's environmental clearance procedures set forth in 24 CFR 50.20(1). For that reason, no environmental finding has been prepared for this notice.

(Secs. 211, 221, 224, National Housing Act, 12 U.S.C. 1715b, 17151, 1715o; sec. 7(d), Department of HUD Act, 42 U.S.C. 3535(d)).

Dated: July 15, 1992.

Arthur J. Hill,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 92–17214 Filed 7–21–92; 8:45 am]

BILLING CODE 4210–27–M

[Docket No. D-92-998; FR-3313-D-01]

Office of the Assistant Secretary for Community Planning and Development; Revocation of Redelegation of Authority

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of revocation of redelegation of authority.

SUMMARY: This notice revokes the redelegation of authority published by the Department of Housing and Urban Development in the **Federal Register** on August 19, 1982, at 47 FR 36293, which redelegated the authority to monitor and take corrective and remedial actions with respect to Urban Development Action Grants (UDAGs), except the authority to adjust, reduce or withdraw grants, from the Assistant Secretary for Community Planning and Development to Regional Administrators.

EFFECTIVE DATE: July 10, 1992.

FOR FURTHER INFORMATION CONTACT: Shirley Manko, Office of Community Planning and Development, Department of Housing and Urban Development, 451 7th Street, SW, room 7232, Washington, DC 20410. Telephone (202) 708-2087. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On August 19, 1982, the Department of Housing and Urban Development published a redelegation of authority in the **Federal Register** at 47 FR 36293, which redelegated the authority to monitor and take corrective and remedial actions with respect to Urban Development Action Grants (UDAGs), except the authority to adjust, reduce or withdraw grants, from the Assistant Secretary for Community Planning and Development to Regional Administrators. This redelegation is being revoked because of a recent policy decision to centralize monitoring of UDAGs in the HUD office in Washington, DC.

Accordingly, the Assistant Secretary for Community Planning and Development hereby revokes the following Redelegation of Authority:

Revocation of Redelegation of Authority

The Redelegation of Authority published by the Department of Housing and Urban Development in the **Federal Register** on August 19, 1982, at 47 FR 36293, which redelegated the authority to monitor and take corrective and remedial actions with respect to Urban Development Action Grants (UDAGs), except the authority to adjust, reduce or withdraw grants, from the Assistant Secretary for Community Planning and Development to Regional Administrators is revoked.

Authority: Section 7(d), Department of Housing and Urban Development Act, 42 U.S.C. § 3535(d).

Dated: July 10, 1992.

Randall H. Erben,

Acting Assistant Secretary for Community Planning and Development.

[FR Doc. 92-17215 Filed 7-21-92; 8:45 am]

BILLING CODE 4210-29-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK-967-4230-15]

Notice for Publication; AA-6703-B, AA-6703-D, AA-6703-A2; Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Sec. 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(a), will be issued to The Tatitlek Corporation for 8,448.28 acres. The lands involved are in the vicinity of the Village of Tatitlek, Alaska.

Copper River Meridian, Alaska

T. 11 S., R. 6 W.,
T. 12 S., R. 6 W.,
T. 11 S., R. 7 W.,
T. 12 S., R. 7 W.,
T. 13 S., R. 8 W.,
T. 9 S., R. 9 W.,
T. 10 S., R. 9 W.,
T. 13 S., R. 9 W.,
T. 10 W., R. 10 W.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the Cordova Times. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513-7599 ((907) 271-5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal Government or regional corporation, shall have until August 21, 1992, to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

Terry R. Hassett,

Chief, Branch of KCS Adjudication.

[FR Doc. 92-17219 Filed 7-21-92; 8:45 am]

BILLING CODE 4310-JA-M

[UT-942-4212-13; UTU-65023]

Issuance of Land Exchange Conveyance Document; Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Exchange of public and private lands.

SUMMARY: This action informs the public of the conveyance of 160.00 acres of public land out of Federal ownership. This action also opens 160.00 acres of reconveyed lands to operation of the public land laws generally.

FOR FURTHER INFORMATION CONTACT: Michael L. Crocker, Bureau of Land Management, Utah State Office, 324 South State Street, P.O. Box 45155, Salt Lake City, Utah 84145-0155, 801-539-4118.

SUPPLEMENTARY INFORMATION: 1. The United States has issued an exchange conveyance document to Sage Point Coal Company, for the surface estate of the following described lands pursuant to section 206 of the Act of October 21, 1976, 90 Stat. 2756; 43 U.S.C. 1716:

Salt Lake Meridian

T. 13 S., R. 11 E.,
Sec. 25, S½SW¼NE¼, E½NE¼SW¼, SE¼SW¼, W½SE¼.
The area described aggregates 160.00 acres.

2. In exchange for these lands, the United States acquired the surface estate of the following described lands:

Salt Lake Meridian

T. 14 S., R. 11 E.,
Sec. 13, S½SW¼, NE¼SW¼;
Sec. 24, NE¼NW¼.
The areas described aggregate 160.00 acres.

3. At 7:45 a.m., on August 21, 1992, the lands described in paragraph 2 will be open to the operation of the public land laws generally. These lands are subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 7:45 a.m., on the date stated above, will be considered as simultaneously filed at that time. Those received thereafter will be considered in the order of filing.

4. The purpose of this exchange was to acquire critical riparian habitat.

James M. Parker,

State Director.

[FR Doc. 92-17224 Filed 7-21-92; 8:45 am]

BILLING CODE 4310-DQ-M

[UT-040-02-4212-14]

Utah; Realty Action

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The following described public land in Washington County, Utah has been examined and identified as suitable for sale under section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750; 43 U.S.C. 1713) at not less than the appraised fair market value:

Salt Lake Meridian

T. 39 S., R. 16 W.,

Section 19, that portion of the SW¼SW¼SE¼NE¼ lying west of the county road, comprising approximately .9 acres.

DATES: On or before September 8, 1992, interested parties may submit comments to the District Manager, Cedar City District Office.

ADDRESSES: Comments should be addressed to the District Manager, Cedar City District Office, 176 East D.L. Sargent Drive, Cedar City, Utah 84720.

FOR FURTHER INFORMATION CONTACT: Detailed information concerning this action is available for review at the Dixie Resource Area Office by contacting Dale Ross at (801) 673-4654.

SUPPLEMENTARY INFORMATION: This land is difficult and uneconomic to manage and is not needed for Federal purposes. Conveyance is consistent with current BLM land use planning and would be in the public interest. The land described above is hereby segregated from appropriation under the public land laws, including the mining laws, pending the disposition of this action or 270 days from the date of publication of this notice, whichever occurs first.

This land is being offered by direct sale to Dr. Charles Bingham. All minerals will be reserved to the United States.

Any adverse comments will be evaluated by the State Director who may vacate or modify this realty action and issue a final determination. In the absence of any action by the State Director, this realty action will become the final determination of the Department of the Interior.

Dated: July 13, 1992.

Gordon Staker,

Cedar City District Manager.

[FR Doc. 92-17228 Filed 7-21-92; 8:45 am]

BILLING CODE 4310-DQ-M

[AZ-942-02-4730-12]

Arizona; Filing of Plats of Survey

1. A plat, in 2 sheets, constituting the map of the Muggins Mountains Wilderness Boundary, as required by Public Law 101-628—November 28, 1990, Section 1.—Titles I through III of this Act may be cited as the "Arizona Desert Wilderness Act of 1990" TITLE 1, SEC. 101. (c), and the survey in Townships 7 and 8 South, Ranges 19 and 20 West, Gila and Salt River Meridian, Arizona, was accepted April 10, 1992, and was officially filed on April 15, 1992.

A plat representing a dependent resurvey of a portion of the south boundary and a metes-and-bounds survey of the Muggins Mountains Wilderness Area in Township 7 South, Range 19 West, Gila and Salt River Meridian, Arizona, was accepted April 10, 1992, and was officially filed April 15, 1992.

A plat, in 3 sheets, representing a dependent resurvey of a portion of the west and north boundaries and a portion of the subdivisional lines; and the subdivision of section 19 and a metes-and-bounds survey of the Muggins Mountains Wilderness Area in Township 8 South, Range 19 West, Gila and Salt River Meridian, Arizona, was accepted April 10, 1992, and was officially filed April 15, 1992.

A plat, in 3 sheets, representing the dependent resurvey of a portion of the east and north boundaries and a portion of the subdivisional lines; and the subdivision of sections 11 and 13 and a metes-and-bounds survey of the Muggins Mountains Wilderness Area in Township 8 South, Range 20 West, Gila and Salt River Meridian, Arizona, was accepted April 10, 1992, and was officially filed April 15, 1992.

These plats were prepared at the request of the Bureau of Land Management, Deputy State Director, Lands and Renewable Resources.

A supplemental plat showing amended lottings in section 31, Township 23 North, Range 5 East, Gila and Salt River Meridian, Arizona, was accepted April 28, 1992, and was officially filed April 30, 1992.

This plat was prepared at the request of the Bureau of Land Management, Arizona State Office, Branch of Lands Operations.

A supplemental plat showing amended lottings in sections 24 and 25, Township 5 South, Range 22 East, Gila and Salt River Meridian, Arizona, was accepted June 2, 1992, and was officially filed on June 9, 1992.

This plat was prepared at the request of the Bureau of Land Management, Arizona State Office, Branch of Records.

A plat representing a dependent resurvey of a portion of the subdivisional lines and a metes-and-bounds survey in section 12, Township 15 South, Range 11 East, Gila and Salt River Meridian, Arizona, was accepted May 6, 1992, and was officially filed May 13, 1992.

A plat representing the dependent resurvey of a portion of the west boundary, the subdivision of section 7, and a metes-and-bounds survey in Township 15 South, Range 12 East, Gila and Salt River Meridian, Arizona, was accepted May 6, 1992, and was officially filed May 13, 1992.

A plat representing the dependent resurvey of portions of the subdivisional lines, the subdivision of section 11 and the dependent resurvey of portions of certain mineral surveys; and a metes-and-bounds survey in Township 17 South, Range 12 East, Gila and Salt River Meridian, Arizona, was accepted June 18, 1992, and was officially filed June 24, 1992.

These plats were prepared at the request of the Bureau of Land Management, Phoenix District Office.

A plat, in 2 sheets, representing a dependent resurvey of portions of the north boundary, the east boundary, the subdivisional lines; and the subdivision of section 1, and metes-and-bounds surveys in Township 9 South, Range 22 West, Gila and Salt River Meridian, Arizona, was accepted June 3, 1992, and was officially filed on June 9, 1992.

This plat was prepared at the request of the Bureau of Land Management, Yuma District Office.

A supplemental plat showing Tract 38 in Unsurveyed Township 4½ North, Range 29 East, Gila and Salt River Meridian, Arizona, was accepted April 27, 1992, and was officially filed April 30, 1992.

This plat was prepared at the request of the Forest Service, Apache-Sitgreaves National Forest.

A plat, in 2 sheets, representing a dependent resurvey of the south boundary and a portion of the east boundary; and a survey of the west boundary, identical with the Sixth Guide Meridian East, a portion of the east boundary and the subdivisional lines in Township 27 North, Range 25 East, Gila and Salt River Meridian, Arizona, was accepted April 28, 1992, and was officially filed May 6, 1992.

A plat representing a survey of the west boundary, identical with the Sixth Guide Meridian East, the south and east boundaries, and the subdivisional lines, in Township 28 North, Range 25 East, Gila and Salt River Meridian, Arizona, was accepted April 28, 1992, and was officially filed May 6, 1992.

A plat representing a survey of the west boundary, identical with the Sixth Guide Meridian East, the east and north boundaries, and the subdivisional lines of Township 30 North, Range 25 East, Gila and Salt River Meridian, Arizona, was accepted June 11, 1992, and was officially filed June 17, 1992.

These plats were prepared at the request of the Bureau of Indian Affairs, Navajo Area Office.

A plat representing a dependent resurvey of a portion of the Fifth Standard Parallel North, (south boundary), and the exterior boundaries in Township 21 North, Range 26 East, Gila and Salt River Meridian, Arizona, was accepted June 17, 1992, and was officially filed June 24, 1992.

This plat was prepared at the request of the Navajo and Hopi Indian Relocation Commission.

2. These plats will immediately become the basic records for describing the land for all authorized purposes. These plats have been placed in the open files and are available to the public for information only.

3. All inquiries relating to these lands should be sent to the Arizona State Office, Bureau of Land Management, P.O. Box 16563, Phoenix, Arizona 85011.

James P. Kelley,

Chief, Branch of Cadastral Survey.

[FR Doc. 92-17311 Filed 7-21-92; 8:45 am]

BILLING CODE 4310-32-M

[AZ#-930-4214-10; AZA-26964, AZA-26965]

Proposed Withdrawal and Opportunity for Public Meeting; Arizona

July 10, 1992.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, has filed two applications to withdraw approximately 410.00 acres (AZA-26964 for 320.00 acres and AZA-26965 for 90 acres) of National Forest System land for the Houston Mesa Campground (AZA-26964), and the Payson Visitor Information Center (AZA-26965). This notice closes the land for up to 2 years from location and entry under the United States mining laws only. The land will remain open to all other applicable uses.

DATES: Comments and requests for a meeting should be received on or before October 20, 1992.

ADDRESSES: Comments and meeting requests should be sent to the Arizona State Director, Bureau of Land Management (BLM), 3707 N. Seventh Street, Phoenix, Arizona 85014 or P.O. Box 16563, Phoenix, Arizona, 85011-6563.

FOR FURTHER INFORMATION CONTACT: John Mezes, BLM Arizona State Office, 602-640-5509.

SUPPLEMENTARY INFORMATION: On June 26 and July 1, 1992, the U.S. Department of Agriculture, Forest Service, filed applications to withdraw the following described National Forest System lands from location and entry under the United States mining laws only, subject to valid existing rights:

Gila and Salt River Meridian, Arizona

Tonto National Forest

T. 11 N., R. 10 E. (Houston Mesa Campground, AZA 26964),
Sec. 27, N½.
T. 10 N., R. 10 E. (Payson Visitor Information Center, AZA 26965),
Sec. 16, SE¼SE¼, E½SW¼SE¼, S½NE¼SE¼, SE¼NW¼SE¼.

The acres described aggregate 410.00 acres in Gila County.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawals. All interested persons who desire a public meeting for the purpose of being heard on the subject must submit a written request to the undersigned officer within 90 days from the date of publication of this notice.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawals may present their views in writing to the undersigned officer of the BLM.

Upon a determination by the authorized officer that a public meeting will be held, a notice of time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless an application is denied or cancelled or the withdrawals are approved prior to that date. The temporary uses which will be permitted during this segregative period are all those applicable to U.S. Forest Service administered lands except those under the mining laws. The temporary segregation of the lands in connection with these applications shall not affect the administrative jurisdiction over the lands.

Beaumont C. McClure,

Deputy State Director, Lands and Renewable Resources.

[FR Doc. 92-17230 Filed 7-21-92; 8:45 am]

BILLING CODE 4310-32-M

[NM-930-4214-10; NMNM 88049]

Amendment of Proposed Withdrawal and Opportunity for Public Meeting, and Partial Termination of Segregation; New Mexico

AGENCY: Bureau of Land Management.

ACTION: Notice.

SUMMARY: By letter dated June 30, 1992, the United States Department of Agriculture, Forest Service, amended pending withdrawal application number NMNM 88049 by deleting 160 acres and adding 380 acres. Application NMNM 88049 was filed on December 16, 1991, for 3,478 acres, and an amendment was filed on February 19, 1992, for 3,760.08 acres of lands for the Guadalupe Canyon Zoological Botanical Area within the Coronado National Forest in Township 33 South, Ranges 21 and 22 West, New Mexico Principal Meridian. A notice of proposed withdrawal and opportunity for public meeting on application NMNM 88049 for the 3,760.08 acres was published in the **Federal Register**, Volume 57, No. 55, on Friday, March 20, 1992. This notice closes the 380 acres being added to the application from location and entry under the United States mining laws. The lands will remain open to all other uses which may be made of National Forest System lands. This notice also terminates the segregation on the 160 acres being deleted from the application.

DATES: Comments and requests for a public meeting should be received on or before October 20, 1992.

ADDRESSES: Comments and meeting requests should be sent to the New Mexico State Director, BLM, P.O. Box 27115, Santa Fe, New Mexico 87502-7115.

FOR FURTHER INFORMATION CONTACT: Georgiana E. Armijo, BLM, New Mexico State Office, 505-438-7594.

SUPPLEMENTARY INFORMATION: 1. The Department of Agriculture's amended application filed June 30, 1992, proposes to withdraw the following additional described National Forest System lands from location and entry under the

United States mining laws, subject to valid existing rights:

New Mexico Principal Meridian

Coronado National Forest

T. 33 S., R. 21 W.,
Sec. 17, SW¼NW¼, NW¼SW¼, and W½SE¼SW¼;
Sec. 20, W½NE¼NW¼;
Sec. 32, NE¼NW¼ and W½NW¼.
T. 33 S., R. 22 W.,
Sec. 24, NE¼NW¼ and SW¼SE¼;
Sec. 25, E½E½NW¼ and E½NE¼SW¼.

The areas described aggregate 380 acres in Hidalgo County.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the additional lands in the proposed withdrawal may present their views in writing to the New Mexico State Director of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the additional lands in the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the additional lands in the proposed withdrawal must submit a written request to the New Mexico State Director within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR 2300.

For a period of 2 years from the date of March 20, 1992, the lands will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. The temporary uses which will be permitted during this segregative period are any land uses, except location under the mining laws, permitted by the Forest Service under existing laws and regulations including, but not limited to, necessary protection for the flora and fauna and threatened and endangered plants and animals.

2. The amended application described in paragraph 1 deletes the following described National Forest System lands from application NMNM 88049:

New Mexico Principal Meridian

Coronado National Forest

T. 33 S., R. 21 W.,
Sec. 29, NE¼NW¼;
Sec. 31, SE¼SE¼.
T. 33 S., R. 22 W.,
Sec. 36, SW¼NE¼ and NW¼SE¼.

The areas described aggregate 160 acres in Hidalgo County.

3. At 8 a.m. on August 21, 1992, the lands described in paragraph 2 shall be opened to such forms of disposition as may by law be made of National Forest System lands, including location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of lands described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1988), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: July 10, 1992.

Monte G. Jordan,

Associate State Director.

[FR Doc. 92-17227 Filed 7-21-92; 8:45 am]

BILLING CODE 4310-FB-M

National Park Service

Amistad National Recreation Area, TX; Contract Negotiations

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: Public notice is hereby given that the National Park Service proposes to negotiate a concession contract authorizing a tour boat to operate a scheduled and nonscheduled sightseeing service for the general public; boat fueling for the general public, tour boats, and National Park Service ranger boats on an as needed basis; snack type food and beverage service at reservation office; merchandising resale operation; tow boat service; and other services incidental to the operations authorized at the request of the Secretary at Amistad National Recreation Area, Texas, for a period of ten (10) years from January 1, 1993 through December 31, 2002.

EFFECTIVE DATE: September 21, 1992.

ADDRESSES: Interested parties should contact the Superintendent, Amistad National Recreation Area, Post Office Box 420367, Del Rio, Texas 78842-0367, for information as to the requirements of the proposed contract.

SUPPLEMENTARY INFORMATION: This contract requires a construction and improvement program. Offerors should conduct their own cost analyses before responding to this prospectus.

The Secretary will consider and evaluate all proposals received as a result of this notice. All proposals must be postmarked or hand delivered on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Dated: July 7, 1992.

Richard Marks,

Acting Regional Director, Southwest Region.

[FR Doc. 92-17235 Filed 7-21-92; 8:45 am]

BILLING CODE 4310-70-M

Concession Contract Negotiations

AGENCY: National Park Service, Interior.

ACTION: Public Notice.

SUMMARY: Public notice is hereby given that the National Park Service proposes to negotiate a concession contract with the best qualified operator authorizing it to provide medical, ambulance transport, clinic, and hospital facilities and services for the public at Yellowstone National Park in Wyoming for a period of five (5) years from November 1, 1992, through October 31, 1997.

EFFECTIVE DATE: October 20, 1992.

ADDRESSES: Interested parties should contact the Regional Director, Rocky Mountain Region, 12795 W. Alameda Parkway, P.O. Box 25287, Denver, Colorado 80225, for information as to the requirements of the proposed contract.

SUPPLEMENTARY INFORMATION: The contract may warrant a ten (10) year term should a successful proponent offer to provide a construction and improvement program described in the government's Statement of Requirements. The construction and improvement program proposed has been addressed in the Development Concept Plan/Environmental Assessment for the Lake/Bridge Bay Area, dated January 1992 and the Development Concept Plan for Old Faithful, dated January 1985 for Yellowstone National Park.

The existing Concessioner, West Park Hospital dba, Yellowstone Park Medical Services (YPMS) has performed its obligations to the satisfaction of the Secretary under an existing five (5) year contract which expires by limitation of time on December 31, 1992, and therefore pursuant to the provisions of

Section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. § 20), is entitled to be given preference in the renewal of the contract and in the negotiation of a new contract as defined in 36 CFR § 51.5.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be received by the Regional Director, Rocky Mountain Region, 12795 W. Alameda Parkway, P.O. Box 25287, Denver, Colorado 80225 not later than the ninetieth (90th) day following publication of this notice to be considered and evaluated.

Dated: July 17, 1992.

Ben L. Moffett,

Acting Regional Director, Rocky Mountain Region.

[FR Doc. 92-17269 Filed 7-21-92; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 701-TA-311 (Final)]

Certain Circular, Welded, Non-Alloy Steel Pipes and Tubes From Brazil

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of a final countervailing duty investigation.

SUMMARY: The Commission hereby gives notice of the institution of final countervailing duty investigation No. 701-TA-311 (Final) under section 705(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)) (the Act) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Brazil of certain circular, welded, non-alloy steel pipes and tubes,[1] provided for in subheadings 7306.30.10 and 7306.30.50 of the Harmonized Tariff Schedule of the United States.

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: June 8, 1992.

FOR FURTHER INFORMATION CONTACT: Douglas E. Corkran (202-205-3177), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000.

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that certain benefits which constitute subsidies within the meaning of section 703 of the Act (19 U.S.C. 1671b) are being provided to manufacturers, producers, or exporters in Brazil of certain circular, welded, non-alloy steel pipes and tubes. The investigation was required in a petition filed on September 24, 1991, by Allied Tube and Conduit Corp., Harvey, IL; American Tube Co., Phoenix, AZ; Bull Moose Tube Co., Gerald, MO; Century Tube Corp., Pine Bluff, AR; Sawhill Tubular Division, Cyclops Corp., Sharon, PA; Laclede Steel Co., St. Louis, MO; Sharon Tube Co., Sharon, PA; Western Tube and Conduit Corp., Long Beach, CA; and Wheatland Tube Corp;, Collingswood, NJ.

Participation in the Investigation and Public Service List

Persons wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, not later than twenty-one (21) days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and addresses of allpersons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this final investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff Report

The prehearing staff report in this investigation will be placed in the nonpublic record on August 27, 1992, and a public version will be issued thereafter, pursuant to § 207.21 of the Commission's rules.

Hearing

The Commission will hold a hearing in connection with this investigation beginning at 9:30 a.m. on September 15, 1992, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before September 4, 1992. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on September 11, 1992, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.12(f), and 207.23(b) of the Commission's rules.

Written Submissions

Each party is encouraged to submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of § 207.22 of the commission's rules; the deadline for filing is September 9, 1992. Parties may also file written testimony in connection

[1] The products covered in this investigation are welded, non-alloy steel pipes and tubes, of circular cross section, not more than 406.4 mm (16 inches) in outside diameter, regardless of wall thickness, surface finish (black, galvanized, or painted), or end finish (plain end, bevelled end, threaded, or threaded and coupled). These pipes and tubes are generally known as standard pipe, though they may also be called structural or mechanical tubing in certain applications. Standard pipes and tubes are intended for the low-pressure conveyance of water, steam, natural gas, air, and other liquids and gases in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses. Standard pipe may also be used for light load-bearing or mechanical applications, such as for fence tubing, and for the protection of electrical wiring, such as conduit shells.

The scope of this investigation is not limited to standard pipe and fence tubing, or those types of mechanical and structural pipe that are used in standard pipe applications. All carbon steel pipes and tubes within the physical description outlined above are included in this investigation, except line pipe, oil country tubular goods, boiler tubing, cold-drawn or cold-rolled mechanical tubing, pipe and tube hollows for redraws, finished scaffolding, and finished rigid conduit. Standard pipe that is dual or triple certified/stenciled that enters the U.S. as line pipe of a kind used for oil or gas pipelines is also not included in this investigation.

with their presentation at the hearing, as provided in § 207.23(b) of the Commission's rules, and posthearing briefs, which must conform with the provisions of § 207.24 of the Commission's rules. The deadline for filing posthearing briefs is September 23, 1992; witness testimony must be filed no later than three (3) days before the hearing. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before September 23, 1992. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of § 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to section 207.20 of the Commission's rules.

By order of the Commission.

Issued: July 14, 1992.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 92-17239 Filed 7-21-92; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-335]

Certain Dynamic Sequential Gradient Compression Devices and Component Parts Thereof; Decision Not To Review Initial Determination Amending Complaint and Investigation To Add Additional Respondent

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) (Order No. 7) issued on June 12, 1992, by the presiding administrative law judge (ALJ) in the above-captioned investigation amending the complaint and notice of investigation to add Huntleigh Medical Limited as a respondent.

FOR FURTHER INFORMATION CONTACT: Marc A. Bernstein, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202-205-3087.

SUPPLEMENTARY INFORMATION: On June 12, 1992, the ALJ issued an ID granting in part a motion by complainant The Kendall Company to add additional respondents. The ID granted the motion to the extent of adding Huntleigh Medical Limited as a respondent. It denied Kendall's request that Huntleigh Healthcare (U.K.) and Huntleigh Healthcare (U.S.) be added as respondents. No petitions for review of the ID were filed. This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and Commission interim rule 210.53(h), 19 CFR 210.53(h).

Copies of the ID and all nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SE., Washington, DC 20436, telephone 202-205-2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810.

Dated: July 14, 1992.

By order of the Commission.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 92-17243 Filed 7-21-92; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-339]

Certain Commercial Food Portioners, Components Thereof, Including Software, and Process Thereof; Investigation; Design Systems, Inc.

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on June 15, 1992, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Design Systems, Inc., 14949 N.E. 40th Street, Redmond, Washington, 98052. Complainant supplemented the Complaint by filing letters dated June 25, June 26, and July 1, 1992.

The complaint, as supplemented, alleges a violation of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain commercial food portioners and components thereof, including software, by reason of alleged infringement of claims 1-6 of U.S. Letters Patent 4,557,019, and that there exists an industry in the United States as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after a full investigation, issue a permanent exclusion order and permanent cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., room 112, Washington, DC 20436, telephone 202-205-1802. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810.

FOR FURTHER INFORMATION CONTACT: Steven A. Glazer, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202-205-2577.

AUTHORITY: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in § 210.12 of the Commission's Interim Rules of Practice and Procedure, 19 CFR 210.12.

SCOPE OF INVESTIGATION: Having considered the complaint, the U.S. International Trade Commission, on July 14, 1992, *Ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain commercial food portioners or components thereof, including software, by reason of alleged direct or induced infringement of claims 1-6 of U.S. Letters Patent 4,557,019, and whether there exists an industry in the United States as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—Design Systems, Inc., 14949 N.E. 40th Street, Redmond, Washington 98052.

(b) The respondents are the following companies alleged to be in violation of

section 337, and are the parties upon which the complaint is to be served:

Lumetech, Ltd., Strandvejen 50, DK–2900 Hellerup, Copenhagen, Denmark.

Koch Supplies, Inc., 1411 West 29th Street, Kansas City, Missouri 64108.

Koch/Lumetech, 1411 West 29th Street, Kansas City, Missouri 64108.

(c) Steven A. Glazer, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., room 401K, Washington, DC 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, Janet D. Saxon, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with § 210.21 of the Commission's Interim Rules of Practice and Procedure, 19 CFR 210.21. Pursuant to §§ 201.16(d) and 210.21(a) of the Commission's Rules (19 CFR 201.16(d) and 210.21(a)), such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to such respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against such respondent.

By order of the Commission.

Issued: July 14, 1992.

[FR Doc. 92–17244 Filed 7–21–92; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–335]

Certain Dynamic Sequential Gradient Devices; Change of Commission Investigative Attorneys

Notice is hereby given that, as of this date, Linda C. Odom, Esq. and Alesia M. Woodworth, Esq. of the Office of Unfair Import Investigations are designated as the Commission investigative attorneys in the above-cited investigation instead of Linda C. Odom, Esq. and Sarah C. Middleton, Esq.

The Secretary is requested to publish this Notice in the **Federal Register.**

Dated: July 13, 1992.

Lynn I. Levine,

Director, Office of Unfair Import Investigations, 500 E Street, SW., Washington, DC 20436.

[FR Doc. 92–17245 Filed 7–21–92; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 731–TA–571 (Preliminary)]

Professional Electric Cutting and Sanding/Grinding Tools From Japan

Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Japan of professional electric cutting and sanding/grinding tools, provided for in subheadings 8461.50.00, 8465.91.00, 8508.20.00, and 8508.80.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV)

Background

On May 29, 1992, a petition was filed with the Commission and the Department of Commerce by The Black & Decker Corp., Towson, MD, alleging that an industry in the United States is materially injured and threatened with material injury by reason of LTFV imports of the subject products from Japan. Accordingly, effective May 29, 1992, the Commission instituted antidumping investigation No. 731–TA–571 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the Federal Register of June 5, 1992 (57 FR 24059). The conference was held in Washington, DC, on June 19, 1992, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on July 13, 1992. The views of the Commission are contained in USITC Publication 2536 (July 1992), entitled "Professional Electric Cutting and Sanding/Grinding Tools from Japan: Determination of the Commission in Investigation No. 731–TA–571 (Preliminary) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation."

Issued: July 14, 1992.

By Order of the Commission.

Paul R. Bardos,

Acting Secretary

[FR Doc. 92–17242 Filed 7–21–92; 8:45 am]

BILLING CODE 7020–02–M

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[Investigation No. 332–328]

Live Cattle and Beef: U.S. and Canadian Industry Profiles, Trade, and Factors of Competition

AGENCY: United States International Trade Commission.

ACTION: Notice of institution of investigation and scheduling of public hearing.

EFFECTIVE DATE: July 13, 1992.

SUMMARY: Following receipt on June 12, 1992, of a request from the Committee on Ways and Means, United States House of Representatives, and the Senate Committee on Finance, United States Senate (Committees), the Commission instituted investigation No. 332–328, under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) for the purpose of reporting on economic and competitive conditions in the U.S. and Canadian cattle and beef industries.

As requested by the Committees, the Commission will provide an updated version of the Commission's report on investigation No. 332–241, "The Competitive Position of Canadian Live Cattle and Beef in U.S. Markets" (USITC Pub. 1996, July 1987).

More specifically, as requested by the Committees the Commission will seek to provide:

(1) An updated profile of the U.S. and Canadian live cattle and beef sectors in terms of factors such as production levels and trends, markets, and production cycles.

(2) A discussion of trade in live cattle and beef between the United States and Canada and the regional distribution of U.S.-Canadian trade.

(3) A discussion of trade in live cattle and beef between the United States and other countries.

(4) A discussion of Federal, State, and Provincial Government assistance programs that are available to the cattle and beef sectors, including the Canadian National Tripartite Stabilization Program (NTSP) and payments thereunder.

(5) A discussion of other factors having a significant bearing on competitive conditions and trade.

The Committees requested that the Commission submit its report not later than 7 months after the receipt of the letter of request.

FOR FURTHER INFORMATION CONTACT: David E. Ludwick (202) 205–3329 or Rose Steller (202) 205–3323, Agriculture Division, Office of Industries, or William Gearhart (202) 205–3091, Office of the General Counsel, U.S. International Trade Commission. Hearing impaired persons can obtain information on this study by contacting the Commission's TDD terminal on (202) 205–1810.

PUBLIC HEARING: A public hearing in connection with this investigation is currently scheduled to begin at 9:30 a.m. on September 9, 1992, at the U.S. International Trade Commission Building, 500 E Street, SW., Washington, DC. The hearing will continue on September 10, 1992, if required due to the number of persons wishing to testify. All persons have the right to appear by counsel or in person, to present information, and to be heard. Persons wishing to appear at the public hearing should file a letter asking to testify with the Secretary, United States International Trade Commission, 500 E St., SW., Washington, DC 20436, not later than the close of business (5:15 p.m.), on August 26, 1992. In addition, persons testifying should file prehearing briefs (original and 14 copies) with the Secretary by the close of business on August 28, 1992. The deadline for filing post hearing briefs is the close of business on September 21, 1992.

WRITTEN SUBMISSIONS: Interested persons may submit written statements concerning the investigation. To be assured of consideration, written statements (original plus 14 copies) must be received by the close of business (5:15 p.m.) September 21, 1992. Commercial or financial information that a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform to the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons. All submissions should be addressed to the Secretary at the Commission's office in Washington, DC.

Issued: July 14, 1992.

By order of the Commission.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 92–17241 Filed 7–21–92; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–331]

Certain Microcomputer Memory Controllers, Components Thereof and Products Containing Same

Notice is hereby given that the prehearing conference in this proceeding scheduled for July 27, 1992, and the hearing scheduled to commence immediately thereafter (57 FR 29332, July 1, 1992) are cancelled.

The Secretary shall publish this notice in the **Federal Register.**

Issued: July 15, 1992.

Janet D. Saxon,

Administrative Law Judge.

[FR Doc. 92–17240 Filed 7–21–92; 8:45 am]

BILLING CODE 7020–02–M

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 509]

Railroad Revenue Adequacy—1991 Determination

AGENCY: Interstate Commerce Commission.

ACTION: Notice of decision.

SUMMARY: On July 22, 1992, the Commission served a decision announcing the 1991 revenue adequacy determinations for the Nation's Class I railroads. One carrier (Illinois Central) is found to be revenue adequate. The remaining carriers are found to be revenue inadequate.

EFFECTIVE DATE: July 22, 1992.

FOR FURTHER INFORMATION CONTACT: Ward L. Ginn, Jr. (202) 927–6187, (TDD for hearing impaired: (202) 927–5721).

SUPPLEMENTARY INFORMATION: This annual determination of railroad revenue adequacy is made in accordance with the standards developed in Standards for Railroad Revenue Adequacy, 364 I.C.C. 803 (1981), as modified in Standards for Railroad Revenue Adequacy, 3 I.C.C.2d 261 (1986), and Supplemental Reporting of Consolidated Information for Revenue Adequacy Purposes, 5 I.C.C.2d 65 (1988). It also incorporates modifications made in Railroad Revenue Adequacy—1988 Determination, 6 I.C.C.2d 933 (1990). This decision applies the rate of return standard to data for the year 1991.

A railroad will be considered revenue adequate under 49 U.S.C. 10704(a) if it achieves a rate of return on net investment at least equal to the current cost of capital for the railroad industry for 1991, determined to be 11.6 percent in Railroad Cost of Capital—1991, 8 I.C.C.2d 402 (1992). Additional information is contained in a concurrent decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.] This action will not significantly affect either the quality of the human environment or energy conservation.

Decided: July 9, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons, Phillips, and Emmett.

Sidney L. Strickland, Jr.,

Secretary.

Railroad	ROI	Finding
Atchison, Topeka & Santa Fe Railway Co.	6.5%	Inadequate.
Burlington Northern Railroad Co	NM	Inadequate.
Chicago & Northwestern Transportation Co.	7.1%	Inadequate.
Consolidated Rail Corp.	NM	Inadequate.
CSX Transportation Inc.	NM	Inadequate.
Florida East Coast Railway Co.	2.2%	Inadequate.
Grand Trunk Western Railroad Co.	NM	Inadequate.

Railroad	ROI	Finding
Illinois Central Railroad Co.	15.2%	Adequate.
Kansas City Southern Railroad Co.	9.3%	Inadequate.
Norfolk Southern Corporation (Combined Railroad Subsidiaries)	6.0%	Inadequate.
Soo Line Railroad Company	4.0%	Inadequate.
Southern Pacific Transportation Co. (Including St. Louis Southwestern Railway Co. and Denver & Rio Grande Western Railroad Co.)	NM	Inadequate.
Union Pacific Railroad Co.	1.7%	Inadequate.

NM=ROI is negative, therefore it is not meaningful.

[FR Doc. 92-17291 Filed 7-21-92; 8:45 am]
BILLING CODE 7035-01-M

[Finance Docket No. 32100]

Exemption; The Broe Companies, Inc. and Railco, Inc.—Control Exemption—Chicago West Pullman Transportation Corporation, et al.

The Broe Companies, Inc., a holding company, and its wholly owned subsidiary, Railco, Inc., a non-carrier, jointly referred to as applicants, have filed a notice of exemption to acquire control through stock ownership of non-carrier Chicago West Pullman Transportation Corporation (CWPT) which, in turn, controls the following six class III railroads: The Chicago West Pullman & Southern Railroad; the Georgia Woodlands Railroad; the Newburgh & South Shore Railroad; the Chicago Rail Link; the Manufacturers' Junction Railway; and the Wisconsin and Calumet Railroad. Applicants presently control through the Great Western Railway Company (GWR) the following class III railroads: the Great Western Railway Company of Iowa, Inc. and the Great Western Railway Company of Colorado, Inc. The proposed transaction was to have been consummated on June 30, 1992.

Applicants indicate that: (1) The lines operated by CWPT's rail carrier subsidiaries do not connect with the lines operated by GWR's rail carrier subsidiaries; (2) the involved transaction is not a part of a series of anticipated transactions that would connect the railroads with each other or any railroad in their corporate family; and (3) the transaction does not involve a class I carrier. The transaction is therefore exempt from the prior approval requirements of 49 U.S.C. 11343. See 49 CFR 1180.2(d)(2).

As a condition to the use of this exemption, any employees adversely affected by the transaction will be protected by the conditions set forth in New York Dock Ry.—Control—Brooklyn Eastern Dist., 360 I.C.C. 60 (1979).

This notice is filed under 49 CFR 1180.2(d)(2). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.[1] Pleadings must be filed with the Commission and served on: Louis E. Gitomer, Taylor, Morell & Gitomer, suite 210, 919 18th Street NW., Washington, DC 20006.

Decided: July 16, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-17292 Filed 7-21-92; 8:45 am]
BILLING CODE 7035-01-M

[Finance Docket No. 32090]

Exemption; H. Peter Claussen and Linda C. Claussen—Continuance in Control Exemption—H & S Railroad Company, Inc.

H. Peter Claussen and Linda C. Claussen, noncarrier individuals in control of two rail carriers, Gulf & Ohio Railways, Inc. (G&OR), and Wiregrass Central Railroad Company, Inc. (WCR), have filed a notice of exemption to continue to control H & S Railroad Company, Inc. (H&SRC), upon the latter's becoming a carrier.

H&SRC, a noncarrier, has concurrently filed a notice of exemption in Finance Docket No. 32089, H & S Railroad Company, Inc.—Acquisition, Operation, and Trackage Rights Exemption—Lines of Hartford and Slocomb Railroad Company, to acquire and operate a 4-mile line of railroad and to acquire trackage rights over another line segment in Alabama. The transaction involved there was expected to be consummated on or after June 30, 1992.

H. Peter Claussen and Linda C. Claussen indicate that: (1) The properties operated by the affiliated railroads will not connect with each other; (2) the continuance in control is not a part of a series of anticipated transactions that would connect the railroads with each other or any other railroad in tier corporate family; and (3) the transaction does not involve a class I carrier. The transaction therefore is exempt from the prior approval requirements of 49 U.S.C. 11343. See 49 CFR 1180.2(d)(2).

As a condition to use of this exemption, any employees affected by the transaction will be protected by the conditions set forth in New York Dock Ry.—Control—Brooklyn Eastern Dist., 360 I.C.C. 60 (1979).

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Pleadings must be filed with the Commission and served on: Kevin M. Sheys, Weiner, Broadsky, Sidman & Kider, P.C., 1350 New York Avenue, NW., suite 800, Washington, DC 20005-4797.

Decided: July 14, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.

Secretary.

[FR Doc#. 92-17293 Filed 7-21-92; 8:45 am]
BILLING CODE 7035-01-M

[Finance Docket No. 32108]

Exemption; Dallas, Garland & Northeastern Railroad, Inc.; Trackage Rights Exemption; Dallas Area Rapid Transit Lines at Dallas, TX

Dallas Area Rapid Transit (Dart) has agreed to grant trackage rights to Dallas, Garland & Northeastern Railroad, Inc. (DGNO), over 1.8 miles of rail line (consisting of a 1.7-mile segment and a 500-foot connecting segment) within the city limits of Dallas, TX. The trackage rights are to become effective on or after July 31, 1992.

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Kelvin J.

[1] By decision served July 1, 1992, the Commission's Office of the Secretary granted a motion filed by applicants for a protective order regarding their stock purchase agreement. Patrick W. Simmons, Illinois Legislative Director for United Transportation Union, has appealed under 49 CFR 1011.7. That appeal will be resolved in a separate decision. Mr. Simmons also indicates that he will be filing a petition to revoke this exemption.

Dowd, Slover & Loftus, 1224 Seventeenth Street, NW., Washington, DC 20036.

As a condition to the use of this exemption, any employees affected by the trackage rights will be protected pursuant to Norfolk and Western Ry. Co.—Trackage Rights—BN, 354 I.C.C. 605 (1978), as modified in Mendocino Coast Ry., Inc.—Lease and Operate, 360 I.C.C. 653 (1980), and as clarified in Wilmington Term. R.R.—Pur. & Lease—CSX Transp. Inc., 6 I.C.C.2d 799 (1990), aff'd sub nom. Railway Labor Executives' Ass'n v. ICC, 930 F.2d 511 (6th Cir. 1991).

Dated: July 14, 1992.

By the Commission, David M. Kinschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-17294 Filed 7-21-92; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 32089]

Exemption; H & S Railroad Company, Inc.; Acquisition, Operation, and Trackage Rights Exemption; Lines of Hartford and Slocomb Railroad Co.

H & S Railroad Company, Inc. (H&SRC), a noncarrier, has filed a notice of exemption to: (1) Acquire and operate a 4-mile line of railroad owned by Hartford and Slocomb Railroad Company (Hartford), between milepost 382, at Dothan, AL, and milepost 386, at Taylor, AL; and (2) acquire trackage rights on Hartford's line of railroad between mileposts 378.88 and 382, at Dothan. The proposed transaction was to have been consummated on or about June 30, 1992.

This proceeding is related to Finance Docket No. 32090, H. Peter Claussen and Linda C. Claussen—Continuance in Control Exemption—H & S Railroad Company, Inc., wherein H. Peter Claussen and Linda C. Claussen, noncarrier individuals, have concurrently filed a notice to exempt their continuance in control of H&SRC upon the latter's becoming a carrier.

Any comments must be filed with the Commission and served: Kevin M. Sheys, Suite 800 1350 New York Avenue, NW., Washington, DC 20005.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: July 14, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-17295 Filed 7-21-92; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 32085]

Exemption; Mile-Hi Transportation Consultants Enterprises, Inc., and Lincoln Branch, Inc.; Acquisition and Operation Exemption; Line of Western States Properties, Inc.

Mile-Hi Transportation Consultants Enterprises, Inc. (Mile-Hi), and Lincoln Branch, Inc., noncarriers, have filed a notice of exemption to acquire and operate a line of railroad owned by Western States Properties, Inc. Mile-Hi will conduct the rail operations on the line, which runs between milepost E.P.S. 4700-45, M.P. 530.81, at Limon, Lincoln County, CO, and milepost E.P.S. 689-80 ± M.P. 591.54, at Falcon, El Paso County, CO, and has been operated by Cadillac & Lake City Railway. The proposed transaction was to have been consummated on or about July 7, 1992.

Any comments must be filed with the Commission and served on: Peter J. Crouse, 80 Garden Center, Broomfield, CO 80020.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: July 16, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-17296 Filed 7-21-92; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Antitrust Division

Pursuant to the National Cooperative Research Act of 1984—Precision Risc Organization

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Precision Risc Organization ("PRO") on June 16, 1992, filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the venture and (2) the nature and objectives of the venture. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the venture and its general areas of planned activities are given below.

As of June 11, 1992, the voting members of PRO are: Convex Computer Corporation, Richardson, TX; Hewlett-Packard Company, Palo Alto, CA; Hitachi Ltd., Shinagawa-ku, Tokyo 140, JAPAN; Oki Electric Industry Company, Ltd., Minato-ku, Tokyo 108, JAPAN; and Yokogawa Electric Corporation, Tokyo 180, JAPAN.

As of June 11, 1992, the non-voting members of PRO are: Mitsubishi Electric Corporation, Kanagawa 247, JAPAN; Sequoia Systems Inc., Marlborough, MA; Hughes Aircraft Company, Anaheim, CA; and Prime Computer, Framingham, MA.

PRO is an unincorporated association organized under the laws of the State of California. It was organized on March 23, 1992.

The purpose of PRO is to establish PA-RISC, a computer architecture originally developed by Hewlett-Packard Company, which is based on reduced instruction set computing concepts, as an evolving open architecture and to promote the worldwide use of PA-RISC-based products for the ultimate benefit of the end-user community. PRO will achieve this purpose, in part, by: (i) Adopting a set of interface specifications relating to PA-RISC which will be consistent with PRO's purpose as described above (the "PRO Standards"); (ii) providing a forum for interested parties to recommend changes to the PRO Standards; (iii) making available certain compliance testing and technical services to hardware and software vendors who want to market products which are compliant with the PRO Standards; (iv) developing, licensing, and promoting certification trademarks which will be used to demonstrate that products are compliant with the PRO Standards; (v) publishing and broadly distributing the PRO Standards and related literature; and (vi) recruiting new members to join from a broad spectrum of system vendors, independent software vendors, independent hardware vendors, semiconductor vendors, academic institutions, the information technology consumer community, and the general public.

The above described activities of PRO are intended to help foster an open

standards environment which will encourage greater availability of PA–RISC-based products from a variety of hardware vendors and greater availability of software solutions for use on PA–RISC-based products so that the end-user community will have the benefit of a wider range of choices when purchasing computer products and solutions.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 92–17204 Filed 7–21–92; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

Manufacturer of Controlled Substances; Application

Pursuant to § 1301.43(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on November 25, 1991, Janssen, Inc., HC 02 Box 19250, Gurabo, Puerto Rico 00658–9629, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug:	Schedule
Alfentanil (9737)	II
Sufentanil (9740)	II

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than August 21, 1992.

Dated: July 9, 1992.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 92–17254 Filed 7–21–92; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances; Registration

By Notice dated March 3, 1992, and published in the **Federal Register** on March 11, 1992, (57 FR 8681), Johnson Matthey, Inc., Custom Pharmaceuticals Department, 2002 Nolte Drive West, Deptford, New Jersey 08066, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug:	Schedule
Alfentanil (9737)	II
Sufentanil (9740)	II
Fentanyl (9801)	II

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: July 9, 1992.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 92–17255 Filed 7–21–92; 8:45 am]

BILLING CODE 4410–09–M

Importer of Controlled Substances; Registration

By Notice dated April 27, 1992, and published in the **Federal Register** on May 1, 1992, (57FR18908), Mallinckrodt Specialty Chemicals Company, Mallinckrodt and Second Streets, St. Louis, Missouri 63147, made application to the Drug Enforcement Administration to be registered as an importer of the basic class of controlled substances listed below:

Drug:	Schedule
Coca leaves (9040)	II
Opium, raw (9600)	II
Opium poppy (9650)	II
Poppy straw concentrate (9670)	II

No comments or objections have been received. Therefore, pursuant to section 1008(a) of the Controlled Substances Import and Export Act and in accordance with title 21 Code of Federal Regulations 1311.42, the above firm is granted registration as an importer of the basic class of controlled substances listed above.

Dated: July 9, 1992.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 92–17248 Filed 7–21–92; 8:45 am]

BILLING CODE 4410–09–M

Importer of Controlled Substances; Registration

By Notice dated April 21, 1992, and published in the **Federal Register** on April 29, 1992, (57 FR 18167), Noramco of Delaware, Inc., Division McNeilab, Inc., 500 Old Swedes Landing Road, Wilmington, Delaware 19801, made application to the Drug Enforcement Administration to be registered as an importer of the basic class of controlled substances listed below:

Drug:	Schedule
Opium, raw (9600)	II
Poppy straw concentrate (9670)	II

No comments or objection have been received. Therefore, pursuant to section 1008(a) of the Controlled Substances Import and Export Act and in accordance with title 21 Code of Federal Regulations 1311.42, the above firm is granted registration as an importer of the basic class of controlled substances listed above.

Dated: July 9, 1992.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 92–17249 Filed 7–21–92; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances; Application

Pursuant to § 1301.43(a) of title 21 of the Code of Federal Regulations (CFR), this notice that on March 3, 1992, Penick Corporation, 158 Mount Olivet Avenue, Newark, New Jersey 07114, made application to the Drug Enforcement Administration (DEA) for registration as

a bulk manufacturer of the basis classes of controlled substances listed below:

Drug:	Schedule
Ibogaine (7260)	I
Tetrahydrocannabinols (7370)	I
Dihydromorphine (9145)	I
Pholcodine (9314)	I
Alphacetylmethadol (9603)	I
Methylphenidate (1724)	II
Cocaine (9041)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Diphenoxylate (9170)	II
Benzoylacgonine (9180)	II
Ethylmorphine (9190)	II
Hydrocodone (9193)	II
Meperidine (9230)	II
Methadone intermediate (9254)	II
Dextropropoxyphene, bulk (non-dosage forms) (9273).	II
Morphine (9300)	II
Thebaine (9333)	II
Opium extracts (9610)	II
Opium fluid extract (9620)	II
Opium, tincture (9630)	II
Opium, powdered (9639)	II
Opium, granulated (9640)	II
Oxymorphone (9652)	II
Phenazocine (9715)	II
Alfentanil (9737)	II
Sulfentanil (9740)	II
Fentanyl (9801)	II

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than August 21, 1992.

Dated: July 9, 1992.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 92-17253 Filed 7-21-92; 8:45 am]

BILLING CODE 4410-09-M

Importation of Controlled Substances Application

Pursuant to section 1008 of the Controlled Substances Import and Export Act (121 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with § 1311.42 of title 21, Code of Federal Regulations (CFR), notice is hereby given that on April 14, 1992, Radian Corporation, 8501 Mo-Pac Boulevard, P.O. Box 201088, Austin, Texas 78720, made application to the Drug Enforcement Administration to be registered as an importer of dextropropoxyphene, bulk (non-dosage forms) (9273) a basic class of controlled substance in Schedule II. The firm plans to import deuterated material not currently available in the United States for manufacturing an exempt product.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than August 21, 1992.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42(b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745-46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator of the Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42(a), (b), (c), (d), (e), and (f) are satisfied.

Dated: July 9, 1992.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 92-17250 Filed 7-21-92; 8:45 am]

BILLING CODE 4410-09-M

Importation of Controlled Substances; Application

Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with § 1311.42 of title 21, Code of Federal Regulations (CFR), notice is hereby given that on March 18, 1992, Roberts Laboratories, Inc., Meridian Center III, 6 Industrial Way West, Eatontown, New Jersey 07724, made application to the Drug Enforcement Administration to be registered as an importer of propiram (9649) a basic class of controlled substance in Schedule I.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR),

and must be filed no later than August 21, 1992.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42 (b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I and II are and will continue to be required to demonstrate to the Deputy Assistant Administrator of the Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42 (a), (b), (c), (d), (e), and (f) are satisfied.

Dated: July 9, 1992.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 92–17252 Filed 7–21–92; 8:45 am]

BILLING CODE 4410–09–M

Importer of Controlled Substances; Registration

By Notice dated April 27, 1992, and published in the **Federal Register** on May 1, 1992, (57 FR 18910), Stepan Chemical Company, Natural Products Dept., 100 W. Hunter Avenue, Maywood, New Jersey 07607, made application to the Drug Enforcement Administration to be registered as an importer of coca leaves (9040), a basic class of controlled substance listed in Schedule II.

No comments or objections have been received. Therefore, pursuant to section 1008(a) of the Controlled Substances Import and Export Act and in accordance with title 21 Code of Federal Regulations 1311.42, the above firm is granted registration as an importer of the basic class of controlled substance listed above.

Dated: July 9, 1992.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 92–17247 Filed 7–21–92; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances; Registration

By Notice dated April 27, 1992, and published in the **Federal Register** on May 1, 1992, (57 FR 18910), Stepan Chemical Company, Natural Products Department, 100 W. Hunter Avenue, Maywood, New Jersey 07607, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug:	Schedule
Cocaine (9041)	II
Ecgonine (9180)	II

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: July 9, 1992.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 92–17256 Filed 7–21–92; 8:45 am]

BILLING CODE 4410–09–M

Importation of Controlled Substances; Application

Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with § 1311.42 of title 21, Code of Federal Regulations (CFR), notice is hereby given that on April 16, 1992, Wildlife Laboratories, Inc., 1401 Duff Drive, suite 600, Fort Collins, Colorado 80524, made application to the Drug Enforcement Administration to be registered as an importer of carfentanil (9743) a basic class of controlled substance in Schedule II.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than August 21, 1992.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42(b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator of the Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42(a), (b), (c), (d), (e), and (f) are satisfied.

Dated: July 9, 1992.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 92–17251 Filed 7–21–92; 8:45 am]

BILLING CODE 4410–09–M

NATIONAL COMMISSION ON MIGRANT EDUCATION

Meeting

ACTION: Notice of meeting.

SUMMARY: The National Commission on Migrant Education will hold its twentieth meeting on Tuesday, July 28, 1992, during a conference call between Commission members and staff. The Commission was established by Public Law 100–297, April 28, 1988.

DATE, TIME, AND PLACE: Tuesday, July 28, 1992, beginning at 7 p.m., at 8120 Woodmont Avenue, Fifth Floor, Bethesda, MD 20814.

STATUS: Open to the public. Audio equipment provided for public attendance. Limited seating available.

AGENDA: Continued discussion of draft findings and recommendations for final report.

FOR FURTHER INFORMATION CONTACT: Elizabeth J. Skiles (301) 492–5336, National Commission on Migrant Education, 8120 Woodmont Avenue, Fifth Floor, Bethesda, Maryland 20814.

Note: In order to meet the deadlines required for finalizing the Commission's final report, scheduling of this meeting to allow for

the 15-day publication of the notice was not possible.

Linda Chavez,

Chairman.

[FR Doc. 92-17238 Filed 7-17-92; 12:32 pm]

BILLING CODE 6820-DE-M

NATIONAL EDUCATION GOALS PANEL

Meeting

AGENCY: The National Education Goals Panel.

ACTION: Notice of meeting.

SUMMARY: The National Education Goals Panel was established by a Joint Statement between the President and the Nation's governors dated July 31, 1990. The panel will determine how to measure and monitor progress toward achieving the national education goals and report to the nation on progress toward the goals.

TENTATIVE AGENDA ITEMS: The agenda for the meeting includes a discussion and review of Goal 1 (readiness for school) indicators, a report on potential citizenship indicators; a progress report from the Goal 5 (literacy) task force on Collegiate Assessment and a progress report from the technical planning group on International Workforce Comparisons.

DATE: The fourteenth meeting is scheduled for Friday, July 31, 1992, 1–4:15 p.m.

ADDRESSES: The Ramada Renaissance Techworld Hotel, 999 9th Street, NW., Washington, DC

FOR FURTHER INFORMATION CONTACT: The National Education Goals Panel Office at (202) 632–0952. Please give your name to indicate attendance.

Dated: July 16, 1992.

Roger B. Porter,

Assistant to the President for Economic and Domestic Policy.

[FR Doc. 92-17246 Filed 7-21-92; 8:45 am]

BILLING CODE 3127-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Notice of Meeting; Challenge/ Advancement Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Challenge/ Advancement Advisory Panel (Dance Challenge Section) to the National Council on the Arts will be held on August 7, 1992 from 9 a.m.–5:30 p.m. in room 714 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

Portions of this meeting will be open to the public from 9 a.m.–10 a.m. and 5 p.m.–5:30 p.m. The topics will be introductory remarks and policy discussion.

The remaining portion of this meeting from 10 a.m.–5 p.m. is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 20, 1991, this session will be closed to the public pursuant to subsection (c) (4), (6), and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5439.

Dated: July 17, 1992.

Yvonne M. Sabine,

Director, Panel Operations, National Endowment for the Arts.

[FR Doc. 92-17301 Filed 7-21-92; 8:45 am]

BILLING CODE 7537-01-M

Advisory Panel; Challenge/ Advancement

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Challenge/ Advancement Advisory Panel (Music Challenge Section) to the National Council on the Arts will be held on August 12–13, 1992 from 9 a.m.–5:30 p.m. in room 714 at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

Portions of this meeting will be open to the public on August 12 from 9 a.m – 10 a.m. and on August 13 from 5 p.m.–5:30 p.m. The topics will be introductory remarks, overview of Challenge III, and policy discussion.

The remaining portions of this meeting on August 12 from 10 a.m.–5:30 p.m. and August 13 from 9 a.m.–5 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 20, 1991, these sessions will be closed to the public pursuant to subsection (c) (4), (6), and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5439.

Dated: July 17, 1992.

Yvonne M. Sabine,

Director, Panel Operations, National Endowment for the Arts.

[FR Doc. 92-17302 Filed 7-21-92; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Undergraduate Science, Engineering, and Mathematics Education; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting:

NAME: Special Emphasis Panel in Undergraduate Science, Engineering, and Mathematics Education.

DATES AND TIMES:
August 12, 1992; 7:30 p.m. to 9 p.m.
August 13, 1992; 8 a.m. to 5 p.m.
August 14, 1992; 8 a.m. to 5 p.m.
August 15, 1992; 8 a.m. to 2 p.m.

PLACE: Holiday Inn Crowne Plaza, 300 Army/Navy Drive, Arlington, VA 22202.

TYPE OF MEETING: Closed.

CONTACT PERSON: Dr. Herbert Levitan, Program Director, NSF, 1800 G St., NW., rm. 1210, Washington, DC 20550. Telephone: 202/357–7051.

PURPOSE OF MEETING: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

AGENDA: To review and evaluate unsolicited proposals submitted to the Undergraduate Course and Curriculum Development Program.

REASON FOR CLOSING: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b.(c) (4) and (6) of the Government in the Sunshine Act.

Dated: July 17, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92–17220 Filed 7–21–92; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–237]

Commonwealth Edison Co., Dresden Nuclear Power Station, Unit 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of a schedular exemption from the requirements of 10 CFR part 50 to Commonwealth Edison Company (CECo, the licensee) for the Dresden Nuclear Power Station, Unit 2, located in Grundy County, Illinois.

Environmental Assessment

Identification of Proposed Action

The proposed action would grant a schedular exemption from the requirements of section III.D.2.(a) and III.D.3 (Type B and type C tests, respectively) of appendix J to 10 CFR part 50 relating to the primary reactor containment leakage testing for water cooled reactors. The purpose of the tests is to assure that leakage through primary reactor containment shall not exceed allowable leakage rate values as specified in the Technical Specifications and that periodic surveillance is performed.

The Need for the Proposed Action

By letter dated May 27, 1992, the licensee requested, pursuant to 10 CFR 50.12(a), a one time schedular exemption for Dresden Unit 2 from the 24-month local leak rate test interval for certain Type B and C leak rate test required by 10 CFR part 50, appendix J, sections III.D.2(a) and III.D.3. The exemption is requested to support the current outage schedule and to avoid the potential for an earlier reactor shutdown.

As a result of an unusually long refuel outage prior to the start of this operating cycle and several unanticipated and lengthy maintenance outages, the total number of days in which the Dresden Unit 2 reactor will be critical this cycle has been reduced considerably. This reduction in the total number of days of operation will not allow complete fuel utilization to be achieved by the originally scheduled refuel outage in September 1992. This incomplete utilization of fuel will cause an increase in excess reactivity during the next fuel cycle. Additionally, if a separate forced outage is imposed to perform testing and operation was not resumed until the fuel was utilized, CECo and its customers would bear the substantial replacement power costs incurred to provide alternate supplies of power during the outage period. In order to rectify these concerns, CECo proposes to reschedule the Dresden Unit 2 refuel outage from September 1992 to January 1993. Increasing the interval between refueling outages will cause Dresden Unit 2 to exceed the 24-month Type B and C leak rate testing surveillance interval required for Type B and C leak rate tests which cannot be performed during reactor operation.

Environmental Impacts of the Proposed Action

The proposed action includes exemptions from performing certain Type B and C tests for a maximum period of 122 days beyond the 24-month test interval. As stated in 10 CFR part 50, appendix J, the purpose of the primary containment leak rate testing requirements is to ensure that leakage rates are maintained within the Technical Specification requirements and to assure that proper maintenance and repair is performed throughout the service life of the containment boundary components. The requested exemption is consistent with the intent of 10 CFR part 50, appendix J, in that it represents a one time only schedular extension of short duration. The required leak tests will still be performed to assess compliance with Technical Specification requirements, albeit later, and to assure that any required maintenance or repair is performed. As noted in sections III.D.2 and III.D.3 of appendix J, it was intended that the testing be performed during refueling outages or other convenient intervals. Extending the 24-month interval by a small amount to reach the next refueling outage will not significantly impact the integrity of the containment boundary and, therefore, will not significantly impact the consequences of an accident or transient in the unlikely event of such an occurrence during the 122 day extended period.

The exemption request is further supported by the information provided in the application. CECo has identified those Type B and C volumes which will be leak tested during reactor operation. In addition, CECo has identified those volumes that will be leak tested should a forced outage of suitable duration occur prior to January 4, 1993 (122 day maximum exemption request). These commitments reduce the number of volumes which need an exemption and the length of time for which an exemption would be required should a forced outage of sufficient duration occur. CECo has also provided the testing methodology which will be used if forced outages occur. In order to provide an added margin of safety and to account for possible increases in the leakage rates of untested volumes during the relatively short period of the exemption, Dresden will impose an administrative limit for maximum pathway leakage of 85 percent of $0.6L_a$ for the remaining Unit 2 fuel cycle.

Past Unit 2 local leak rate test data have, in general, demonstrated good leak rate test results. The current maximum pathway leakage rate for Dresden Unit 2, as determined through Type B and C leak rate testing is 333.53 standard cubic feet per hour (scfh). This value is approximately 68 percent of the Technical Specification limit of 488.45 scfh ($0.6L_a$). As a result of additional maintenance being performed on various pathways during Cycle 13, the current leakage rate has been reduced from the previous outage "As Left" leakage rate of 362.29 scfh. In addition, the previous outage "As Left" total minimum pathway leakage rate for Type B and C testable penetration was 126.69 scfh. This value is approximately 21 percent of the Technical Specification limit of 610.56 scfh ($0.75L_a$). By using the minimum pathway methodology, a

conservative measurement of the actual leakage expected through a pathway under post-accident conditions can be determined. The minimum pathway data from the last two Unit 2 refuel outages also indicates that on a minimum pathway basis, the quality of primary containment does not degrade excessively through the course of the fuel cycle. In addition, the previous outage "As Left" Integrated Leak Rate Test, completed on December 18, 1990, indicated that the primary containment overall integrated leakage rate, which obtains the summation of all potential leakage paths including containment welds, valves, fittings, and penetrations, was 0.8128 weight percent per day plus the calculated leak rate of 0.7428 weight percent per day plus the leakage rate of all nonvented pathways and the leakage compensation for the change in the drywell sump levels. This value is approximately 67 percent of the limit specified in the Technical Specifications (1.2 weight percent per day or 0.75 L_a).

The above data, along with the station imposed limit for maximum pathway leakage, provide a basis for showing that the probability of exceeding the off site dose rates established in 10 CFR part 100 will not be increased by extending the current 24-month Type B and C testing interval for a maximum of 122 days. The proposed exemption does not affect plant nonradiological effluents and has no other environmental impact. Therefore, the Commission concludes there are no measurable environmental impacts associated with the proposed exemption.

Alternative to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed exemption, any alternatives with equal or greater environmental impact need not be evaluated. The principal alternative to the exemption would be to require rigid compliance with the requirements of section III.D.2(a) and III.D.3 of appendix J to 10 CFR part 50. Such action would not enhance the protection of the environment and would result in unjustified costs for the licensee.

Alternative Use of Resources

This action does not involve the use of resources not considered previously in the Final Environmental Statement for Dresden, Units 2 and 3 dated November 1973.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Findings of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, the NRC staff concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this proposed action, see the licensee's request for exemption dated May 27, 1992, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC and at the Morris Public Library, 604 Liberty Street, Morris, Illinois 60451.

Dated at Rockville, Maryland, this 14th day of July 1992.

For the Nuclear Regulatory Commission.

Byron L. Siegel,

Acting Director, Project Directorate III-2, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 92-17268 Filed 7-21-92; 8:45 am]

BILLING CODE 7590-01-M

Biweekly Notice Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law (Pub.L.) 97-415, the Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from June 26, 1992 through July 10, 1992. The last biweekly notice was published on July 8, 1992 (57 FR 30240).

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity For Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Rules and Directives Review Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By August 21, 1992, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene

is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC 20555, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to **(Project Director)**: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room for the particular facility involved.

Houston Lighting & Power Company, City Public Service Board of San Antonio, Central Power and Light Company, City of Austin, Texas, Docket Nos. 50-498 and 50-499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: May 26, 1992, as supplemented by letter dated June 3, 1992.

Description of amendment request: The proposed amendment revises spent fuel pool related Technical Specifications in Sections 3/4.9 and 5.6. The revised specifications introduce a required boron concentration in the spent fuel pool during refueling operations and define categories of fuel assemblies based upon enrichment, burnup and presence of burnable poisons. The allowable arrangement of assemblies within the spent fuel pool is determined as a function of the defined categories.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards

consideration, which is presented below:

(1) The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

HL&P [Houston Lighting & Power Company] has evaluated the revised rack analyses. Based upon SER [Safety Evaluation Report] Supplement 6 which presents the NRC acceptance criteria, the proposed changes to the UFSAR [Updated Final Safety Analysis Report] and to Section 5.6 of the Technical Specifications meet the accepted NRC acceptance criteria for rack subcriticality.

Since the proposed Technical Specifications allow for the storage of fuel assemblies in checkerboard patterns, the probability of occurrence of a misloaded assembly is increased, with respect to the current rack utilization scheme which does not use checkerboard storage. In order to ensure that the rack K_{eff} remains less than or equal to 0.95 in the event of a misloaded assembly, a Technical Specification requirement has been added to require that the boron concentration of the spent fuel pool be maintained above 700 ppm. This value is adequate to ensure that for all misloadings in Region 1 and the misloading of a single fuel assembly in Region 2 the NRC acceptance criteria for rack subcriticality is met.

Therefore, the changes in the utilization of the spent fuel racks do not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

No changes are being proposed to the racks themselves, any other systems, or to the physical structures of the Fuel Handling Building itself. The change is analytical in nature. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) The proposed change does not involve a significant reduction in a margin of safety.

The licensing basis of maintaining a K_{eff} of less than or equal to 0.95 is met by the physical design of the racks and by the use of administrative controls. The Technical Specifications are being revised to require that the boron concentration of the spent fuel pool be maintained at greater than or equal to 700 ppm boron. The presence of this amount of boron is adequate to ensure that even under accident conditions the K_{eff} is maintained at less than or equal to 0.95. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Local Public Document Room location: Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton, Texas 77488.

Attorney for licensee: Jack R. Newman, Esq., Newman & Holtzinger, P.C., 1615 L Street, NW, Washington, DC 20036

NRC Project Director: Suzanne C. Black

Houston Lighting & Power Company, City Public Service Board of San Antonio, Central Power and Light Company, City of Austin, Texas, Docket Nos. 50-498 and 50-499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: June 19, 1992

Description of amendment request: The proposed amendment changes Technical Specification 4.7.9 to incorporate an alternate snubber visual inspection schedule as provided by Generic Letter 90-09, "Alternative Requirements for Snubber Visual Inspection Intervals and Corrective Actions."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment does not involve an increase in the probability or consequences of any previously evaluated accident. This amendment provides an alternate schedule for the visual inspection of snubbers which maintains the same confidence level in the snubbers ability to operate within the specified acceptance level. The accident analyses are therefore unaffected by this proposal.

(2) Would not create the possibility of a new or different type of accident from any accident previously evaluated.

The proposed amendment does not create the possibility of a new or different kind of accident previously evaluated since the confidence level in the number of snubbers available has not been changed.

(3) Would not involve a significant reduction in a margin of safety.

The proposed amendment provides an alternate schedule for the visual inspection of snubbers which maintains the same confidence level in the snubbers ability to operate within a specified acceptance level. The margin of safety is therefore unaffected by this proposal.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Local Public Document Room location: Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton, Texas 77488.

Attorney for licensee: Jack R. Newman, Esq., Newman & Holtzinger, P.C., 1615 L Street, NW, Washington, DC 20036

NRC Project Director: Suzanne C. Black

Iowa Electric Light and Power Company, Docket No. 50-331, Duane Arnold Energy Center, Linn County, Iowa

Date of amendment request: December 19, 1991

Description of amendment request: The proposed amendment would revise the Technical specifications by incorporating extended allowable out-of-service times and surveillance test intervals for reactor protection system, isolation actuation system, emergency core cooling system and control rod block function instrumentation. Additional changes for clarity and consistency were also proposed.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not result in any physical or functional changes to the associated instrumentation. Consequently, the probability of occurrence of an accident previously evaluated in the [Final Safety Analysis Report] FSAR is not increased.

The proposed changes to instrument [allowable out-of-service times] AOTs and [surveillance test intervals] STIs have been evaluated and found to have an insignificant impact on the probability of instrument failure. Further, when the resulting reduction in test-related plant scrams and test-induced wearout of safety-related equipment is considered, the net effect of these changes is to reduce the consequences of any previously evaluated accident.

The proposed elimination of the [average power range monitors] APRM downscale trip signal for the [reactor protection system] RPS logic does not affect the consequences of any accidents evaluated in the FSAR. The downscale trip provides a scram signal only in cases of operator error during startup or power descent. In these cases, such errors would be covered by the remaining neutron monitoring trip functions.

The proposed elimination of instruments which provide an annunciator function only has no effect on the consequences of any accident evaluated in the FSAR, since there are no automatic trip functions involved.

The proposed change in format to the [limiting conditions for operation] LCOs,

surveillance requirements and instrument tables does not affect the consequences of any accident evaluated in the FSAR. The proposed format provides significant improvements in the overall clarity and consistency of the associated TS. The incorporation of Applicable Operating Modes is consistent with [standard technical specifications] STS and provides a more precise correlation with the conditions for which the trip functions are required.

The use of the "minimum operable channels per trip function" requirements for [emergency core cooling system] ECCS and Control Rod Block instrumentation only serves to improve clarity and does not affect the level of protection required.

The use of STS action statements in several instrument tables causes some actions to be more restrictive and allow other actions to be less restrictive than presently required by TS. This ensures that an appropriate amount of urgency is maintained without creating the need for unnecessary plant transients or creating an environment conducive to operator error. The proposed action statements have no effect on the consequences of any accident evaluated in the FSAR.

The proposed addition of several trip functions to the instrument tables increases the level of assurance that appropriate compensatory actions are taken should these functions become inoperable. Since the availability of protective instrumentation is maintained, there is no adverse effect on the consequences of any accident evaluated in the FSAR.

The proposed corrections to the number of channels and/or trip systems for specific instruments provide clarification only and do not represent a reduction in the level of instrumentation required. There is therefore no effect on the consequences of any accidents evaluated in the FSAR.

The proposed changes to the Bases of Sections 3.1 and 3.2 reflect the above changes and include various editorial corrections. These changes have no affect [sic] on the consequences of previously evaluated accident.

2. The proposed changes do not result in any physical or functional changes to the affected instrumentation and therefore do not create the possibility of a new or different kind of accident.

3. The proposed changes to AOTs for the instruments addressed in the LTRs [licensing topical reports] provide additional time for making repairs and performing tests. The lack of AOTs in the current TS creates a hurried atmosphere during repairs and test which could cause an increased risk of error. Also, placing an individual channel in a tripped condition when no AOT exists, as in the current TS, increases the potential of an inadvertent scram. The proposed AOTs provide realistic times to complete the required actions without increasing the overall instrument failure frequency. Therefore, there is no reduction in the margin of safety.

The incorporation of extended STIs results in insignificant changes in the probability of instrument failure as demonstrated by the LTRs. These changes, when coupled with the reduced probability of test-induced plant transients and equipment failure, result in an overall increase in the margin of safety.

The proposed elimination of the APRM downscale trip does not affect the margin of safety as defined in the technical specifications or the FSAR. No credit is taken for the APRM downscale scram for any of the accidents analyzed in the FSAR.

The proposed elimination of several instruments which provide an annunciator function only does not effect [sic] any margin of safety since there are no automatic trip functions involved.

The proposed change in format to the LCOs, surveillance requirements and instrument tables does not affect the margin of safety. The incorporation of Applicable Operating Modes provides a more precise correlation with the conditions for which the trip functions are required. The use of "minimum operable channels per trip function" requirement for ECCS and Control Rod Block instrumentation improves clarity without affecting the level of protection required. Consequently, there is no reduction in the margin of safety.

The proposed incorporation of the STS action statements into several instrument tables will in some cases cause actions to be more restrictive and in other cases cause actions to be less restrictive than presently required by TS. This will ensure that the appropriate amount of urgency is maintained without creating the need for unnecessary plant transients or creating an environment conducive to operator error. In all cases the actions provide guidance that is more specific with regard to the circumstances addressed. Consequently, there is no reduction in the margin of safety.

The proposed addition of several trip functions to the instrument tables increases the level of assurance that appropriate compensatory actions aretaken should these functions become inoperable. Since the availability of protective instrumentation is maintained, there is no reduction in the margin of safety.

The proposed corrections to the number of channels and/or trip systems for specific instruments provide clarification only and do not represent a reduction in the level of instrumentation required. These corrections therefore have no affect [sic] on the margin of safety.

The proposed changes to the TS Bases of Section 3.1 and 3.2 reflect the above changes and include various editorial corrections. These changes have no effect on the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, S.E., Cedar Rapids, Iowa 52401

Attorney for licensee: Jack Newman, Esquire, Kathleen H. Shea, Esquire, Newman and Holtzinger, 1615 L Street, NW., Washington, DC 20036

NRC Project Director: John N. Hannon

Iowa Electric Light and Power Company, Docket No. 50-331, Duane Arnold Energy Center, Linn County, Iowa

Date of amendment request: May 28, 1992

Description of amendment request: The proposed amendment would change the Technical Specifications by reducing the testing of the operable diesel generator when the other diesel generator is inoperable.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not increase the probability or consequences of an accident. Reducing the amount of required testing does not result in any change to the input assumptions or parameters used in any DAEC accident analysis and therefore does not negatively affect any accident scenario. In fact, it will serve to enhance the diesel generator's ability to respond during accident conditions.

2. The proposed change does not result in any physical change to the plant configuration and therefore cannot create the possibility of any new or different type of accident.

3. The margin of safety as defined by TS will not be reduced, since the proposed change makes no modifications to plant equipment and should actually increase the overall availability of the diesel generators. The diesel generators will be in a "test" condition for less time and will experience less wear-related degradation. The chances for human error will also be decreased. This will allow the diesel generators to better fulfill their design function.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, S.E., Cedar Rapids, Iowa 52401

Attorney for licensee: Jack Newman, Esquire, Kathleen H. Shea, Esquire, Newman and Holtzinger, 1615 L Street, NW., Washington, DC 20036

NRC Project Director: John N. Hannon

Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of amendment requests: July 9, 1992 (Reference LAR 92-04)

Description of amendment requests: The proposed amendments would revise Facility Operating License Nos. DPR-80 and DPR-82 for the Diablo Canyon Power Plant Unit Nos. 1 and 2 to change the expiration date of the Unit 1 license from April 23, 2008, to September 22, 2021, and the expiration date for the Unit 2 license from December 9, 2010, to April 26, 2025. These proposed expiration dates would allow for 40 years of operation as permitted by 10 CFR 50.51.

The present operating license terms for Diablo Canyon are based on NRC policy in effect prior to the 1982 determination by the Commission that the 40-year term of operation may begin upon issuance of the first operating license, rather than upon issuance of the construction permit. Therefore, the present operating license terms for Diablo Canyon commence with the dates of issuance of the construction permits for Units 1 and 2, April 23, 1968, and December 9, 1970, respectively. Accordingly, the expiration date for the Unit 1 operating license is April 23, 2008, and the expiration date for the Unit 2 operating license is December 9, 2010.

Since 1982, the Commission has accepted and approved requests to amend existing operating licenses to change the expiration dates and recover the time between the effective dates of the construction permit and the first operating license. More than 50 such license amendments have been granted by the Commission. Consistent with current NRC policy, the proposed 40-year term start dates for Diablo Canyon are September 22, 1981, for Unit 1 and April 26, 1985, for Unit 2, which correspond to the effective dates of the fuel-load/low-power operating licenses for each unit.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

a. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed 40-year operating license terms do not affect the probability or consequences of an accident previously evaluated since the requested extensions entail no physical change in the plant equipment or operating procedures and the FSAR Update safety analyses are based on 40-year plant operation.

Surveillance and maintenance practices, as well as other programs such as environmental qualification of equipment, ensure timely identification and correction of any degradation of safety-related plant equipment. The long term integrity of the reactor vessels has been recently reevaluated using currently acceptable NRC calculational methods and best available DCPP-specific data. The evaluation results demonstrate, as before, that both reactor vessels are safe for normal operations in excess of 40 years. Also, the offsite radiation exposures resulting from postulated accidents have been reanalyzed using population projections for the proposed 40-year operating license terms. The calculated exposures are not significantly different from those documented in the FSAR Update and are well within 10 CFR 100 guideline values.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

b. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The possibility of a new or different kind of accident is not created by the proposed 40-year operating license terms since at least 40-years operation was assumed in the design and construction of DCPP Units 1 and 2. The plant Maintenance Program is designed to both maintain and determine the need to replace safety-related components. Thus, any degradation that might possibly create a new or different kind of postulated accident would be detected and corrected before the occurrence of such an event.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

c. Does the change involve a significant reduction in a margin of safety?

The proposed 40-year operating license terms do not involve a significant reduction in a margin of safety since degradation of safety-related equipment will be identified and corrected by ongoing surveillance and maintenance practices. Existing programs, routine maintenance, and compliance with Technical Specifications assure that an adequate margin of safety is maintained. These activities will remain in effect for the duration of the operating licenses.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407

Attorney for licensee: Christopher J. Warner, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120

NRC Project Director: Theodore R. Quay

Portland General Electric Company, et al., Docket No. 50-344, Trojan Nuclear Plant, Columbia County, Oregon

Date of amendment request: June 26, 1992

Description of amendment request: The licensee has proposed to revise Technical Specification Section 6.0, Administrative Controls, to clarify the responsibilities of the Vice President and Chief Nuclear Officer and responsibilities of the Vice President, Nuclear. Additionally, the licensee has proposed to correct several editorial errors. These errors consist of misspelled words, improper capitalization of terms, omitted words, an omitted definition, improper punctuation, and errors introduced by overlapping amendments.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensees have provided their analysis of the issue of no significant hazards consideration, which is presented below:

1. These changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The change in management reporting relationships will provide for increased senior management attention to each of the functional areas in the Trojan Nuclear Plant (TNP) organization. In particular, the Vice President, Nuclear will be able to devote direct day-to-day attention to Plant operations. The Vice President, Nuclear is located at the Trojan site and is responsible for the functional areas directly related to day-to-day operation of the facility. The Vice President and Chief Nuclear Officer retains responsibility for overall nuclear safety.

This change does not affect Plant operating procedures nor does it affect any systems, structures or components and, therefore, does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The editorial changes are purely administrative in nature and do not affect the way systems or components are operated or maintained. The editorial corrections do not change the intent of the Technical Specifications and, therefore, do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. These changes do not create the possibility of a new or a different kind of accident from any accident previously evaluated.

The change in management reporting relationships will provide for increased

senior management attention to each of the functional areas in the Trojan Nuclear Plant organization. In particular, the Vice President, Nuclear will be able to devote direct day-to-day attention to Plant operations. The Vice President, Nuclear is located at the Trojan site and is responsible for the functional areas directly related to day-to-day operation of the facility. The Vice President and Chief Nuclear Officer retains responsibility for overall nuclear safety.

This change does not affect Plant operating procedures nor does it affect any systems, structures or components and, therefore, does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The editorial changes are purely administrative in nature and do not affect the way systems or components are operated or maintained. The editorial corrections do not change the intent of the Technical Specifications and, therefore, do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. These changes do not involve a significant reduction in a margin of safety.

The change in management reporting relationships will provide for increased senior management attention to each of the functional areas in the Trojan Nuclear Plant organization. In particular, the Vice President, Nuclear will be able to devote direct day-to-day attention to Plant operations. The Vice President, Nuclear is located at the Trojan site and is responsible for the functional areas directly related to day-to-day operation of the facility. The Vice President and Chief Nuclear Officer retains responsibility for overall nuclear safety.

This change does not affect Plant operating procedures nor does it affect any systems, structures or components and, therefore, does not involve a significant reduction in a margin of safety.

The editorial changes are purely administrative in nature and do not affect the way systems or components are operated or maintained. The editorial corrections do not change the intent of the Technical Specifications and, therefore, do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Branford Price Millar Library, Portland State University, 934 S.W. Harrison Street, P.O. Box 1151, Portland, Oregon 97207

Attorney for licensees: Leonard A. Girard, Esq., Portland General Electric Company, 121 S.W. Salmon Street, Portland, Oregon 97204

NRR Project Director: Theodore R. Quay

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: June 4, 1992

Description of amendment request: This amendment request would change the Technical Specifications (TS) to delete the Operations Manager as a position requiring an SRO license and delineate the requirements for the Operations Manager position. These proposed changes would require the Operations Manager to either hold an SRO license or to have held an SRO license on a similar facility.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will not involve a significant increase in the probability or consequences of an accident previously evaluated.

An individual selected to fill the [Operations Manager] OM position will have met current industry guidance on the selection, qualification and training of personnel for nuclear power plants in accordance with ANSI/ANS-3.1-1987 and as specified in [the] Technical Specifications.

2. Will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The deletion of the requirement for the OM to hold a SRO license, unlike a procedure or design change, does not constitute a potential new accident precursor.

3. Will not involve a significant reduction in a margin of safety.

Operations Department personnel will continue to be directly managed by a SRO licensed individual.

Candidates who are not currently holding SRO licenses and who are selected for the OM position must meet the education, experience and training requirements of ANSI N18.1-1971 and the special requirements delineated in Technical Specifications.

[This change will significantly reduce the time the OM spends displaced from the position's managerial activities, therefore reducing the amount of time the Operating Engineer (OE) is required to fulfill the responsibilities of both positions.] Additionally, this change is expected to have an overall positive impact on safety by enhancing both the OM's and OE's ability to effectively carry out their primary responsibilities and by improving the consistency and continuity of managerial oversite for the Operations Department.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070

Attorney for licensee: M. J. Wetterhahn, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005-3502

NRC Project Director: Charles L. Miller

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: June 15, 1992

Description of amendment request: This amendment request would change the Technical Specifications (TS) to provide a six-hour allowable-out-of-service time (AOT) for the discharge line "keep filled" alarm instrumentation associated with the Low Pressure Coolant Injection (LPCI) system and Core Spray System (CSS).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment does not involve a physical or procedural change to any structure, component or system that significantly affects the probability or consequences of any accident or malfunction or equipment important to safety previously evaluated in the Updated Final Safety Analysis Report (UFSAR). The proposed change will provide a reasonable period of time to accomplish required surveillance testing while assuring continued operability of redundant instrumentation.

2. Will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed revision will not involve any physical changes to the plant. Additionally, the AOT will apply only if redundant instrumentation remains operable thereby ensuring that failure of the affected "keep fill" system will still be annunciated.

3. Will not involve a significant reduction in a margin of safety.

The proposed AOT will reduce radiological exposure of plant personnel. Insofar as the AOT will apply only for surveillance testing and only if redundant annunciation remains operable, this change can be made with no significant change in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are

satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070

Attorney for licensee: M. J. Wetterhahn, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005-3502

NRC Project Director: Charles L. Miller

Southern Nuclear Operating Company, Inc., Docket Nos. 50-348 and 50-364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama

Date of amendments request: May 13, 1991

Description of amendments request: The amendments would modify the Technical Specifications (TS) for the overpressure protection systems. Theallowable outage time (AOT) for one inoperable residual heat removal (RHR) relief valve with one or more of the reactor coolant system (RCS) cold leg temperatures less than or equal to 310 degrees Fahrenheit is being decreased from 7 days to 24 hours for water-solid conditions. The required AOT for low temperature conditions other than water-solid will remain at 7 days.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed modification to the AOT for one inoperable RHR relief valve with the RCS in a water-solid condition does not significantly increase the probability or consequences of an accident previously evaluated in the FSAR [Final Safety Analysis Report]. The proposed reduction in AOT is an enhancement to the existing technical specification, and affords increased protection for an LTOP [low temperature overpressure] event postulated during water-solid operation. As previously discussed, this reduction in AOT is being proposed to assure proper overpressure protection is afforded for the most vulnerable situation (water-solid operation). This modification does not directly initiate an accident. Since no changes in relief valve design, setpoint or operation are involved, the probability of brittle reactor vessel failure has not significantly increased by the proposed change. The consequences of accidents previously evaluated in the FSAR are unaffected by this proposed change.

2. The proposed change does not create the possibility of a new or different kind of accident than any accident already evaluated in the FSAR. Cold overpressure events have been analyzed and their bases are presented in the Bases to Technical Specification 3/4.4.10. The reduction in the allowed outage time for one inoperable RHR relief valve will not alter the conclusion of the cold overpressure analysis. This technical specification change enhances the plant ability to prevent an overpressure event by applying greater restriction upon operations during times of highest risk (i.e., water-solid conditions). No new accident scenarios, failure mechanisms, or limiting single failures are introduced as a result of this proposed change. The proposed technical specification modification does not challenge the performance or integrity of any safety-related systems. Therefore, the possibility of a new or different kind of accident is not created.

3. The proposed technical specification change does not involve a significant reduction in the margin of safety. The proposed reduction in AOT for water solid conditions assures proper protection is afforded for all modes of low temperature operation. The margin of safety from an accident is improved by significantly limiting the time allowed with one train of a protection feature inoperable during the time that the plant is in a vulnerable configuration. The LTOP basis for one RHR relief valve capacity has not changed. Therefore there is no significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Houston-Love Memorial Library, 212 W. Burdeshaw Street, P. O. Box 1369, Dothan, Alabama 36302

Attorney for licensee: James H. Miller, III, Esq., Balch and Bingham, P.O. Box 306, 1710 Sixth Avenue North, Birmingham, Alabama 35201

NRC Project Director: Elinor G. Adensam

TU Electric Company, Docket No. 50-445, Comanche Peak Steam Electric Station, Unit 1, Somervell County, Texas

Date of amendment request: April 26, 1991

Description of amendment request: The proposed amendment would revise Unit 1 Technical Specifications Sections 3.3.1/4.3.1 and 3.3.2/4.3.2 and associated Bases to relax the allowed outage times (AOT) and surveillance test intervals (STI) for analog channels shared by the reactor protection system (RPS) and the engineered safety features actuation system (ESFAS).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below.

1. The proposed changes do not involve a significant increase in the probability or consequences of a previously evaluated accident.

The determination that the results of the proposed changes are acceptable was established in the Safety Evaluation Report (SER) and Supplemental SER (SSER) prepared for WCAP-10271 Supplement 2 and WCAP-10271 Supplement 2, Revision 1 (issued by letters dated February 22, 1989 and April 30, 1990). Implementation of the proposed changes is expected to result in an acceptable increase in total reactor protection system and engineered safety features actuation system unavailability. This increase results in a small increase in core damage frequency (CDF) and public health risk. The values determined by the Westinghouse Owners Group (WOG) and presented in the above WCAP for the increase in CDF were verified by Brookhaven National Laboratory as part of an audit and sensitivity analyses for the NRC staff. Based on the small value for the increase in the CDF compared to the range of uncertainty in the CDF, the increase is considered acceptable. The extension of the WOG relaxations in AOTs and STIs to the refueling water storage tank (RWST) level has been separately shown to be bounded by the increased CDF resulting from relaxation of the Steam Generator Level channel AOTs and STIs (included in the WCAP). Therefore, the proposed changes do not involve a significant increase in the probability or consequences of a previously evaluated accident.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not involve hardware changes and do not result in a change in the manner in which the protection system provides plant protection. No change is being made which alters the functioning of the protection system. Rather the likelihood or probability of the protection system functioning properly is affected as described above. Therefore, the proposed changes do not create the possibility of a new or different kind of accident.

3. The proposed changes do not involve a significant reduction in the margin of safety.

The proposed changes do not alter the manner in which safety limits, limiting safety system setpoints or limiting conditions for operation are determined.

The impact of reduced testing other than addressed above is to allow a longer time interval over which instrument uncertainties (e.g., drift) may act. Experience has shown that the initial uncertainty assumptions are valid for reduced testing.

Implementation of the proposed changes is expected to result in an overall improvement in safety due to:

a. Less frequent testing which will result in fewer inadvertent reactor trips and actuations of the engineered safety features actuation system components.

b. Improvements in the effectiveness of the operating staff in monitoring and controlling plant operation. This is due to less frequent distraction of the operator and shift supervisor to attend to instrumentation testing.

Therefore, the proposed changes do not involve a significant reduction in the margin of safety.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Texas at Arlington Library, Government Publications/Maps, 701 South Cooper, P.O. Box 19497, Arlington, Texas 76019.

Attorney for licensee: George L. Edgar, Esq., Newman and Holtzinger, 1615 L Street, N.W., Suite 1000, Washington, D.C. 20036

NRC Project Director: Suzanne C. Black

Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of amendment request: April 30, 1992

Description of amendment request: The proposed amendment would revise Technical Specification (TS) 5.3.2, "Reactor Core - Control Rods," to allow the use of extended life control rods, and allow the use of different Inconel absorber material for the axial power shaping rods.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The staff's review is presented below:

1. The proposed change will not involve a significant increase in the probability or consequences of an accident previously evaluated because the physical design parameters for the extended life control rod assemblies (ELCRAs) assure that there is no increase in the probability of a stuck control rod assembly, the mechanical and thermal-hydraulic analyses for the ELCRAs show that acceptable performance of the control rods will be maintained, and the rod worths for each fuel cycle are evaluated as part of the reload analyses.

2. The proposed change will not create the possibility of a new or different kind of accident from any previously evaluated accident because fuel performance parameters are not being changed, and because Technical Specifications concerning the nuclear heat flux hot channel factor, the nuclear enthalpy rise hot channel factor, the quadrant power tilt, and the departure from nucleate boiling parameters are not being changed.

3. The proposed change will not involve a significant reduction in a margin of safety because the mechanical and thermal-hydraulic analyses for the ELCRAs show that acceptable performance of the control rods will be maintained, and the rod worths for each fuel cycle are evaluated as part of the reload analyses.

Based on this review, it appears that the three standards of 50.92(c) are statisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606

Attorney for licensee: Gerald Charnoff, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, N.W., Washington, DC 20037

NRC Project Director: John N. Hannon

Virginia Electric and Power Company, Docket Nos. 50-280 and 50-281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia

Date of amendment request: June 1, 1992

Description of amendment request: The proposed changes (1) modify the definition of containment integrity and establish Limiting Conditions for Operation and Action Statements for containment isolation systems consistent with the Standard Technical Specifications (NUREG-0452), (2) eliminate the requirement for containment integrity during positive reactivity additions by rod drive motion or boron dilution, (3) eliminate the requirement for containment integrity with the head unbolted and less than 5% shutdown margin, (4) remove the containment isolation valve tables from the Technical Specifications in accordance with Generic Letter 91-08, "Removal of Component Lists From Technical Specifications," and (5) include administrative changes to achieve consistency.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Operation of the Surry Power Station in accordance with the proposed changes will not:

1. Involve a significant increase in the probability of occurrence or consequences of any accident previously evaluated.

• Providing Action Statements for breaches of containment integrity does not change the plant design or modify any component, system, or plant operation. The proposed Action Statements and Surveillance Requirements are consistent with the Standard Technical Specifications. The proposed actions, allowed outage times, and surveillance requirements have no effect on the probability of occurrence or the consequences of previously analyzed accidents.

• Revising the Action Statements when the internal containment air partial pressure is outside its operating limits does not change the plant design or modify any component, system, or plant operation. Providing an allowed outage time of one hour in lieu of continued operation with air partial pressure within +0.25 psig of the operating limit is considered to be conservative, in that it prohibits operation for an extended period of time in such a condition. The proposed one hour allowed outage time is consistent with the Standard Technical Specifications. The revised allowed outage time will have no effect on the probability of occurrence or the consequences of previously analyzed accidents. Rather, modifying the basis for the action from a pressure tolerance to allowed outage time is likely to reduce the time the plant can operate in the Action Statement.

• Modifying the definition of containment integrity and clarifying the containment isolation requirements for refueling operations [does] not impact plant design or change system or plant operation. Therefore, operation with containment integrity established in accordance with the modified definition will not increase the probability of occurrence or consequences of any accident previously evaluated.

• Eliminating the requirements for containment integrity 1) when the reactor head is unbolted with less than a 5% shutdown margin and 2) for positive reactivity additions due to boron dilution or rod movement in cold shutdown does not impact plant design or change plant or system operation.

Boron dilution and an uncontrolled rod withdrawal from a subcritical condition are the positive reactivity accidents analyzed in

cold shutdown and refueling shutdown conditions. The provision of containment integrity has no impact on the probability of either event occurring. An inadvertent boron dilution during cold shutdown or refueling shutdown is precluded by isolating unborated water sources in accordance with Technical Specification 3.2.F. Furthermore, fuel damage does not occur due to an uncontrolled rod withdrawal from cold shutdown. Therefore, removing the requirement for containment integrity with less than a 5% shutdown margin and the reactor head unbolted and for planned positive reactivity additions due to rod motion or boron dilution also will not increase the consequences of any previously analyzed accident.

• Implementing various administrative changes, which include removing the containment isolation valve tables, eliminating the redundant requirements on Figure 3.8.1, capitalizing the defined words and changing the acronyms from FSAR to UFSAR does not impact plant design or operation. The administrative changes will not increase the probability of occurrence or consequences of any accident previously evaluated.

2. Create the possibility of a new or different type of accident from any accident previously evaluated. The plant's design and operation are not being changed. Providing Action Statements for breaches of containment integrity, modifying the definition of containment integrity, eliminating the requirement for containment integrity in cold shutdown and refueling shutdown, clarifying the containment isolation requirements for refueling operations, clarifying the containment air partial pressure requirements, and implementing various administrative changes do not generate any new accident precursors. Thus, no new or different kind of accident is being created.

3. Involve a significant reduction in a margin of safety. Physical plant modifications, or changes in plant operation are not being made. The Technical Specification requirements for containment integrity/isolation are being clarified and appropriate Action Statements and allowed outage times are being established for operation with the breach of containment integrity. Although the requirements for containment integrity 1) when the reactor head is unbolted and the shutdown margin less than 5% Delta k/k and 2) during positive reactivity additions are being removed, both analyzed accident scenarios (i.e., uncontrolled rod withdrawal from subcritical conditions and inadvertent boron dilution) can be precluded or terminated by automatic or manual operator actions prior to any challenge to fuel cladding integrity. The accident analyses do not assume containment integrity to be established for the accidents analyzed in the cold shutdown and refueling shutdown conditions. These administrative changes have no impact on plant operation or the accident analysis assumptions and results. The existing assumptions used in the accident analysis are not being altered. Therefore, the margin of safety will not be reduced by any of the proposed changes.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Attorney for licensee: Michael W. Maupin, Esq., Hunton and Williams, Post Office Box 1535, Richmond, Virginia 23213.

NRC Project Director: Herbert N. Berkow

Previously Published Notices of Consideration of Issuance of Amendennts to Operating Licenses and Proposed No Significant Hazards Consideration Determination and Opportunity For Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration. For details, see the individual notice in the **Federal Register**on the day and page cited. This notice does not extend the notice period of the original notice.

Connecticut Yankee Atomic Power Company, Docket No. 50-213, Haddam Neck Plant, Middlesex County, Connecticut

Date of amendment request: June 25, 1992

Description of amendment request: The proposed amendment would modify Technical Specifications to permit a temporary relaxation of the containment integrity specification to allow the service water side of the No. 4 containment air recirculation fan heat exchanger and motor heat exchanger to be cleaned while the plant remains at power.

Date of publication of individual notice in **Federal Register:** July 7, 1992 (57 FR 29905)

Expiration date of individual notice: August 6, 1992

Local Public Document Room location: Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

Notice of Issuance of Amendment to Facility Operating License

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with these actions was published in the **Federal Register** as indicated. No request for a hearing or petition for leave to intervene was filed following this notice.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendments, (2) the amendments, and (3) the Commission's related letters, Safety Evaluations and/or Environmental Assessments as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, D.C., and at the local public document rooms for the particular facilities involved. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

Baltimore Gas and Electric Company, Docket No. 50-317, Calvert Cliffs Nuclear Power Plant, Unit No. 1, Calvert County, Maryland

Date of application for amendment: May 1, 1992

Brief description of amendment: The amendment revises Technical Specifications (TS) 4.6.2.1.b.1, 4.6.2.1.b.2, 4.6.2.2.b, and 4.6.3.1.d.2. The previous TS identified the specific test signals to be used when testing the containment spray valves and pumps, the containment fan coolers, and the containment iodine filter trains. This revision changes the specific test signal to indicate that the appropriate Engineered Safety Feature Actuation System test signal be used during the required surveillance testing.

Date of issuance: June 30, 1992

Effective date: June 30, 1992

Amendment No.: 172

Facility Operating License No. DPR-53: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: May 27, 1992 (57 FR 22260) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 30, 1992. No significant hazards consideration comments received: No

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland 20678.

Commonwealth Edison Company, Docket Nos. 50-237 and 50-249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois

Date of application for amendments: October 14, 1991, as supplemented February 6, 1992.

Brief description of amendments: Revision of Technical Specifications to reflect a modification to the fast acting solenoid valves which initiate rapid closure of the turbine control valves. The new design uses a pressure switch, rather than a limit switch, to initiate a reactor scram.

Date of issuance: June 29, 1992

Effective date: June 29, 1992

Amendment Nos.: 115 and 112

Facility Operating License Nos. DPR-19 and DPR-25. The amendments revised the Technical Specifications.

Date of initial notice in Federal Register: November 27, 1991 (56 FR 60114) The February 6, 1992, submittal provided additional clarifying information that did not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 29, 1992. No significant hazards consideration comments received: No

Local Public Document Room location: Morris Public Library, 604 Liberty Street, Morris, Illinois 60450.

Commonwealth Edison Company, Docket Nos. 50-295 and 50-304, Zion Nuclear Power Station, Units 1 and 2, Lake County, Illinois

Date of application for amendments: July 10, 1991, as supplemented November 27 and December 30, 1991, and February 14, April 10, April 16, April 20, April 23 and May 26, 1992.

Brief description of amendments: The amendments revise the Technical Specifications (TS) to support the use of VANTAGE 5 fuel, in combination with the present Optimized Fuel Assembly core, and ultimately as the entire core; and changes license condition 2.C.(4) to delete reference to N-1 loop operation for Zion Nuclear Power Station, Units 1 and 2. The amendments also remove cycle specific parameter limits from the TSs and relocate them to a Core Operating Limits Report.

Date of issuance: June 26, 1992

Effective date: June 26, 1992

Amendment Nos.: 139 and 128

Facility Operating License Nos. DPR-39 and DPR-48. The amendments revised the Technical Specifications.

Date of initial notice in Federal Register: May 1, 1991 (56 FR 20029) and September 4, 1991 (56 FR 43805). The November 27 and December 30, 1991, and February 14, April 10, April 16, April 20, April 23 and May 26, 1992, submittals provided additional clarifying information that did not change the initial proposed no significant hazards consideration determination. The July 10, 1991, submittal superseded the March 27, 1991 submittal. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 26, 1992. No significant hazards consideration comments received: No

Local Public Document Room location: Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085.

Detroit Edison Company, Docket No. 50-341, Fermi-2, Monroe County, Michigan

Date of amendment request: May 24, 1988 as supplemented February 27, 1991

Description of amendment request: This amendment changes the Fermi-2 Technical Specifications (TS) based on the guidance provided by the NRC staff in Generic Letter (GL) 87-09 dated June 4, 1987. Fermi-2 Operating License Amendment No. 31 of March 9, 1989, approved the proposed changes to TS 4.0.3 and 4.0.4. This amendment addresses the remaining change to specification 3.0.4. The proposed revision to specification 3.0.4 defines when its provisions apply; i.e., when the effected action statements permit continued operation for an unlimited period of time, instead of defining when the provisions of the specification do not apply.

Date of issuance: June 25, 1992

Effective date: June 25, 1992 with full implementation within 60 days.

Amendment No.: 83

Facility Operating License No. NPF-43. The amendment revises the Technical Specifications

Date of initial notice in Federal Register: June 29, 1988 (53 FR 24509) and May 13, 1991 (57 FR 20510). The Commssion's related evaluation of the amendment is contained in a Safety Evaluation dated June 25, 1992. No significant hazards consideration comments received: No.

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: April 13, 1992, as supplemented June 8, 1992

Brief description of amendments: The amendments revise Technical Specification 3.6.5.5 to allow a pressurizer enclosure hatch between the upper and lower containment volumes to be open for up to 6 hours, instead of 1 hour, to facilitate inspections of components such as PORV block valves.

Date of issuance: June 26, 1992

Effective date: June 26, 1992

Amendment Nos.: 98, 92

Facility Operating License Nos. NPF-35 and NPF-52: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: May 13, 1992 (57 FR 20510) The June 8, 1992, letter provided clarifying information that confirmed the staff's understanding of the scope of work activities to be performed during the revised 6 hours interval and did not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 26, 1992. No significant hazards consideration comments received: No.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

Entergy Operations, Inc., Docket No. 50-313, Arkansas Nuclear One,Unit No. 1, Pope County, Arkansas

Date of amendment request: June 27, 1991, as supplemented December 20, 1991

Brief description of amendment: The amendment revised the Arkansas Nuclear One, Unit 1 (ANO-1) Technical Specifications (TSs) based onthe recommendations provided by the staff in Generic Letter 87-09 related to the applicability of limiting conditions for operation and the surveillance requirements of TS 3.0 and 4.0.

Date of issuance: July 7, 1992

Effective date: July 7, 1992

Amendment No.: 161

Facility Operating License No. DPR-51. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 21, 1991 (56 FR 41581) The additional information contained in the supplemental letter dated December 20, 1991, was clarifying in nature and, thus, within the scope of the initial notice and did not affect the NRC staff's proposed no significant hazards considerations determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 7, 1992. No significant hazards consideration comments received: No.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

Florida Power Corporation, et al., Docket No. 50-302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of application for amendment: February 13, 1992, as supplemented May 6 and June 4, 1992.

Brief description of amendment: The amendment revises the fuel assembly description in Technical Specification 5.3.1 to permit the use of stainless steel rods to replace defective fuel rods.

Date of issuance: June 25, 1992

Effective date: June 25, 1992

Amendment No.: 143

Facility Operating License No. DPR-72. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 1, 1992 (57 FR 11109) The May 6 and June 4, 1992 letters provided additional information which did not alter the staff's initial no significant hazard consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 25, 1992. No significant hazards consideration comments received: No.

Local Public Document Room location: Coastal Region Library, 8619 W. Crystal Street, Crystal River, Florida 32629

Florida Power Corporation, et al., Docket No. 50-302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of application for amendment: February 27, 1992

Brief description of amendment: This amendment revises TSs 3.1.3.3 and 4.1.3.3 in support of installation of the dual channel control rod position indicator.

Date of issuance: June 25, 1992

Effective date: June 25, 1992

Amendment No.: 144

Facility Operating License No. DPR-72. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 15, 1992 (57 FR 13129) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 25, 1992. No significant hazards consideration comments received: No.

Local/ Public Document Room location: Coastal Region Library, 8619 W. Crystal Street, Crystal River, Florida 32629

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-424 and 50-425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of application for amendments: November 11, 1991, as supplemented January 23, 1992

Brief description of amendments: The amendments change surveillance requirements in Technical Specifications (TSs) 3/4.7.6, 3/4.7.7, 3/4.9.12, and associated TS Bases, to revise the minimum heater capacity, and the relative humidity testing requirements for the control room emergency filtration system (CREFS), the piping penetration area filtration and exhaust systems (PPAFES), and the fuel handling building post accident filter system (FHBPAFS).

Date of issuance: July 9, 1992

Effective date: July 9, 1992

Amendment Nos.: 52 and 31

Facility Operating License Nos. NPF-68 and NPF-81: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 22, 1992 (57 FR 5026) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 9, 1992. No significant hazards consideration comments received: No.

Local Public Document Room location: Burke County Library, 412 Fourth Street, Waynesboro, Georgia 30830

Niagara Mohawk Power Corporation, Docket No. 50-220, Nine Mile Point Nuclear Station Unit No. 1, Oswego County, New York

Date of application for amendment: April 24, 1992

Brief description of amendment: The amendment revises Technical Specification 3.4.3/4.4.3 (Access Control) to: (a) define the operating conditions under which the specification applies, (b) include an allowable outage time for continued plant operation while restoration of secondary containment integrity is underway, (c) provide action statements associated with the loss of secondary containment due to access control, and (d) provide periodic surveillance requirements for access doors other than the core spray and containment spray pump compartments.

Date of issuance: June 29, 1992

Effective date: June 29, 1992

Amendment No.: 129

Facility Operating License No. DPR-63: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** May 27, 1992 (57 FR 22264) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 29, 1992 No significant hazards consideration comments received: No

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County,California

Date of application for amendments: June 5, 1991 (License Amendment Request LAR 91-05)

Brief description of amendments: These amendments revised the combined Technical Specifications for the Diablo Canyon Power Plant, Unit Nos. 1 and 2, to relocate certain plant-specific parameter limits to the Core Operating Limits Report in accordance with the recommendations of NRC Generic Letter 88-16.

Date of issuance: July 1, 1992

Effective date: July 1, 1992

Amendment Nos.: 71 and 70

Facility Operating License Nos. DPR-80 and DPR-82: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 7, 1991 (56 FR 37587) The additional information contained in the supplemental letter dated May 19, 1992, served to clarify the amendments, was within the scope of the initial notice, and did not affect the Commission's proposed no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 1, 1992. No significant hazards consideration comments received: No.

Local Public Document Room location: California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407

Philadelphia Electric Company, Public Service Electric and Gas Company Delmarva Power and Light Company, and Atlantic City Electric Company, Docket Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Unit Nos. 2 and 3, York County, Pennsylvania

Date of application of amendments: January 31, 1992, as supplemented by letters dated April 28, 1992 and June 22, 1992.

Brief description of amendments: These amendments change the Technical Specification (TS) Section 4.5.F.1 Surveillance Requirements for the Emergency Diesel Generators. The revised Surveillance Requirement specifies that in the event that a diesel generator becomes inoperable for any reason other than preplanned preventative maintenance or testing, the operable diesel generators shall be demonstrated to be operable immediately and daily thereafter.

The letter dated April 28, 1992 clarified several of the cross references that the licensee had used in the January 31, 1992 submittal to compare the current TS to the proposed TS. In addition, the April 28, 1992 supplement provided revised TS pages that corrected several typographical errors that had been included in the January 31, 1992 submittal. The letter dated April 28, 1992 did not change the substance of the original change request.

The supplement dated June 22, 1992, modified the implementation schedule of the January 31, 1992, submittal. In the January 31, 1992 letter, the licensee indicated that it would not be ready to implement the revised procedures to support the amendment prior to July 31, 1992. Subsequent discussions with the staff determined that the licensee would not be ready to implement the revised procedures until January 1993. The staff expressed concern that the delayed implementation could subject the EDGs to unnecessary wear and tear and could result in unnecessarily aligning EDGs to the general power distribution grid during the course of a series of scheduled maintenance overhauls planned for the EDGs through the summer and fall of 1992.

The licensee then modified the January 31, 1992 request by requesting that the modifications to the Surveillance Requirements for an inoperable diesel generator be approved and implemented in advance of the remainder of the changes included in the January 31, 1992 submittal. The technical basis for the change included in this amendment is included in the January 31, 1992 and June 22, 1992 letters and was evaluated by the staff in the Safety Evaluation dated July 6, 1992.

Date of issuance: July 6, 1992

Effective date: July 6, 1992

Amendments Nos.: 168 and 172

Facility Operating License Nos. DPR-44 and DPR-56: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 29, 1992 (57 FR 20515) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 6, 1992. No significant hazards consideration comments received: No

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Power Authority of The State of New York, Docket No. 50-286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of application for amendment: January 8, 1992, as supplemented February 4, 1992

Brief description of amendment: The amendment revised Technical Specifications Section 3.11 (Moveable In-Core Instrumentation) to specify 38 as the minimum number of detector guide thimbles required operable. The amendment also corrected administrative and typographical errors in Section 3.11.

Date of issuance: June 25, 1992

Effective date: June 25, 1992

Amendment No.: 122

Facility Operating License No. DPR-64: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 4, 1992 (57 FR 7813) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 25, 1992. No significant hazards consideration comments received: No

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Southern California Edison Company, et al., Docket No. 50-206, San Onofre Nuclear Generating Station, Unit No. 1, San Diego County, California

Date of application for amendment: May 1, 1992

Brief description of amendment: The amendment increases the allowed number of emergency diesel engine start-stop cycles between crankshaft inspections from 50 to 70. The amendment also includes clarifications and editorial changes.

Date of issuance: June 29, 1992

Effective date: June 29, 1992

Amendment No.: 147

Facility Operating License No. DPR-13: The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 27, 1992 (57 FR 22266) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 29, 1992. No significant hazards consideration comments received: No.

Local Public Document Room location: Main Library, University of California, P. O. Box 19557, Irvine, California 92713

Southern California Edison Company, et al., Docket No. 50-206, San Onofre Nuclear Generating Station, Unit No. 1, San Diego County, California

Date of application for amendment: May 1, 1992 (PCN 255) and supplemented June 30, 1992

Brief description of amendment: The amendment revises the Technical Specifications Section 3.9, "MODERATOR TEMPERATURE COEFFICIENT (MTC)," Section 3.3.3. "MINIMUM BORON CONCENTRATION IN THE REFUELING WATER STORAGE TANK (RWST) AND SAFETY INJECTION (SI) LINES AND MINIMUM RWST WATER VOLUME," and Section 3.5.2, "CONTROL ROD INSERTION LIMITS." Technical Specification 3.9 involves a reduction to the current end-of-cycle MTC limit. To accommodate this revision to the MTC value, changes are also necessary to Technical Specification limits for safety injection line minimum boron concentration and shutdown margin.

Date of issuance: July 1, 1992

Effective date: July 1, 1992

Amendment No.: 148

Facility Operating License No. DPR-13: The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 27, 1992 (57 FR 22266) The supplemental information contained in letter dated June 30, 1992, was clarifying in nature and thus within the scope of the initial notice and did not affect the NRC staff's proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 1, 1992. No significant hazards consideration comments received: No.

Local Public Document Room location: Main Library, University of California, P. O. Box 19557, Irvine, California 92713

Tennessee Valley Authority, Docket No. 50-260, Browns Ferry Nuclear Plant, Unit 2, Limestone County, Alabama

Date of application for amendment: May 13, 1992

Brief description of amendment: The amendment revises Technical Specifications Table 3.2.C and 3.5.K/4.5.K to allow continued power operation when the Rod Block Monitor (RBM) is inoperable and the Minimum Critical Power Ratio (MCPR) is within specified limits. Technical Specification Bases section 3.2 is also revised to describe the basis for the proposed change. The amendment is a temporary change which will expire at the end of the current Browns Ferry Unit 2 fuel cycle (Cycle 6).

Date of issuance: July 2, 1992

Effective date: July 2, 1992

Amendment No.: 202

Facility Operating License No. DPR-52: Amendment revises the technical specifications.

Date of initial notice in **Federal Register:** May 22, 1992 (57 FR 21833) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 2, 1992. No significant hazards consideration comments received: None

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611.

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendment: April 12, 1991 (TS 89-30)

Brief description of amendment: The amendments incorporate changes to the Technical Specifications to incorporate the balance of the Regulatory Guide 1.97 instrumentation involving the post-accident monitoring and containment isolation valves instrumentation.

Date of issuance: July 9, 1992

Effective date: July 9, 1992

Amendment No.: 159 - Unit 1; 149 - Unit 2

Facility Operating License Nos. DPR-77 and DPR-79: Amendments revise the technical specifications.

Date of initial notice in **Federal Register:** May 15, 1991 (56 FR 22478) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 9, 1992 No significant hazards consideration comments received: None

Local Public Document Room location: Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee 37402

Texas Utilities Electric Company, Docket No. 50-445, Comanche Peak Steam Electric Station, Unit No. 1, Somervell County, Texas

Date of amendment request: November 27, 1991, as supplemented by letters dated May 4 and May 27, 1992.

Brief description of amendment: The amendment revises the Comanche Peak Steam Electric Station, Unit 1 Technical Specifications by including additional provisions for power-operated relief valves (PORVs) and block valve reliability and low temperature overpressure protection. The amendment is in response to Generic Letter 90-06.

Date of issuance: June 29, 1992

Effective date: June 29, 1992, to be implemented within 30 days of issuance.

Amendment No.: Amendment No. 11

Facility Operating License No. NPF-87. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 13, 1992 (57 FR 20518) The May 4, and May 27, 1992, letters were clarifying in nature and thus, within the scope of the initial notice and did not affect the NRC staff's proposed no significant hazards considerations determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 29, 1992. No significant hazards consideration comments received: No

Local Public Document Room location: University of Texas at Arlington Library, Government Publications/Maps, 701 South Cooper, P. O. Box 19497, Arlington, Texas 76019.

Washington Public Power Supply System, Docket No. 50-397, Nuclear Project No. 2, Benton County, Washington

Date of application for amendment: November 18, 1991

Brief description of amendment: The proposed amendment deletes the reference to footnote (e) associated with Technical Specification (TS) Table 3.3.6-1, "Control Rod Block Instrumentation," item 4.a. This removes an error that resulted from an oversight in the original preparation of the WNP-2 TS and allows the TS to conform to actual plant design with respect to the control rod block signals associated with the intermediate range monitoring (IRM) system.

Date of issuance: June 26, 1992

Effective date: June 26, 1992

Amendment No.: 108

Facility Operating License No. NPF-21: The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 27, 1992 (57 FR 22272) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 26, 1992. No significant hazards consideration comments received: No.

Local Public Document Room location: Richland Public Library, 955 Northgate Street, Richland, Washington 99352

Washington Public Power Supply System, Docket No. 50-397, Nuclear Project No. 2, Benton County, Washington

Date of application for amendment: February 25, 1992

Brief description of amendment: The amendment revises Technical Specifications (TS) 2.1.2, "Safety Limits; Thermal Power, High Pressure and High Flow," B.2.0, "Safety Limits and Limiting Safety System Settings," and 6.9.3.2, "Core Operating Limits Report (COLR)," in order to reflect characteristics of the Cycle 8 reload core. This TS amendment specifically addresses the change in the Minimum Critical Power Ratio (MCPR) safety limit due to the analysis that was conducted on the core loading that is to be used for Cycle 8 operations.

Date of issuance: June 29, 1992

Effective date: June 29, 1992

Amendment No.: 109

Facility Operating License No. NPF-21: The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 1, 1992 (57 FR 11118) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 29, 1992. No

significant hazards consideration comments received: No.

Local Public Document Room location: Richland Public Library, 955 Northgate Street, Richland, Washington 99352

Dated at Rockville, Maryland, this 13th day of July 1992.

For the Nuclear Regulatory Commission

Steven A. Varga, Director, Division of Reactor Projects - I/II, Office of Nuclear Reactor Regulation

[FR Doc. 92-17149 Filed 7-21-92; 8:45 am]

BILLING CODE 7590-01-F

Regulatory Guides; Issuance, Availability

The Nuclear Regulatory Commission has issued a revision to a guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

Regulatory Guide 8.25, Revision 1, "Air Sampling in the Workplace," provides guidance on air sampling in restricted areas (as defined in 10 CFR part 20) of the workplace. In this guide, the term "air sampling" includes the collection of samples for later analysis as well as real-time monitoring in which samples are analyzed as they are collected. The guide does not cover environmental or effluent sampling or the analysis of samples.

Comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time. Written comments may be submitted to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Regulatory guides are available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Copies of issued guides may be purchased from the Government Printing Office at the current GPO price. Information on current GPO prices may be obtained by contacting the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013-7082, telephone (202) 512-2249 or (202) 512-2171. Issued guides may also be purchased from the National Technical Information Service on a standing order basis. Details on this service may be obtained by writing NTIS, 5285 Port Royal Road, Springfield, VA 22161.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 6th day of July 1992.

For the Nuclear Regulatory Commission.

Eric S. Beckjord,

Director, Office of Nuclear Regulatory Research.

[FR Doc. 92-17263 Filed 7-21-92; 8:45 am]

BILLING CODE 7590-01-M

Regulatory Guides; Issuance, Availability

The Nuclear Regulatory Commission has issued a new guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

Regulatory Guide 8.35, "Planned Special Exposures," provides guidance on the conditions and prerequisites for permitting planned special exposures allowed by the revision to 10 CFR part 20, "Standards for Protection Against Radiation," and on the associated specific monitoring and reporting requirements and provides examples of acceptable means of satisfying these requirements.

Comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time. Written comments may be submitted to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Regulatory guides are available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Copies of issued guides may be purchased from the Government Printing Office at the current GPO price. Information on current GPO prices may be obtained by contacting the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013-7082, telephone (202) 512-2249 or (202) 512-2171. Issued guides may also be purchased from the National Technical Information Service on a standing order basis. Details on this service may be obtained by writing NTIS, 5285 Port Royal Road, Springfield, VA 22161.

Authority: 5 U.S.C. 552(a).

Dated at Rockville, Maryland, this 6th day of July 1992.

For the Nuclear Regulatory Commission.

Eric S. Beckjord,

Director, Office of Nuclear Regulatory Research.

[FR Doc. 92-17264 Filed 7-21-92; 8:45 am]

BILLING CODE 7590-01-M

Regulatory Guides; Issuance, Availability

The Nuclear Regulatory Commission has issued a new appendix to a guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

Appendix X, "Guidance on Complying with New Part 20 Requirements," to Regulatory Guide 10.8, Revision 2, "Guide for the Preparation of Applications for Medical Use Programs," discusses the major differences introduced by the revised 10 CFR part 20, "Standards for Protection Against Radiation," that modify the guidance previously provided by the NRC for conducting medical use programs.

Comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time. Written comments may be submitted to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Regulatory guides are available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Copies of issued guides may be purchased from the Government Printing Office at the current GPO price. Information on current GPO prices may be obtained by contacting the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013-7082, telephone (202) 512-2249 or (202) 512-2171. Issued guides may also be purchased from the National Technical Information Service

on a standing order basis. Details on this service may be obtained by writing NTIS, 5285 Port Royal Road, Springfield, VA 22161.

Authority: 5 U.S.C. 552(a).

Dated At Rockville, Maryland, this 6th day of July 1992.

For the Nuclear Regulatory Commission.

Eric S. Beckjord,

Director, Office of Nuclear Regulatory Research.

[FR Doc. 92-17265 Filed 7-21-92; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-387 and 50-388]

Pennsylvania Power and Light Co; Allegheny Electric Cooperative, Inc: Correction Notice

On July 2, 1992, the **Federal Register** published a "Partial Withdrawal of Application for Amendments to Facility Operating Licenses" on page 29542 for the Susquehanna Steam Electric Station, Units 1 and 2, for application dated August 16, 1991. The License Nos. read "DPR-14" and "DPR-22". They should read "NPF-14" and "NPF-22".

Dated at Rockville, Maryland this 14th day of July 1992.

For the Nuclear Regulatory Commission.

Charles L. Miller,

Director, Project Directorate I-2, Division of Reactor Projects I-2, Office of Nuclear Reactor Regulation.

[FR Doc. 92-17266 Filed 7-21-92; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

Meeting of the President's Council of Advisors on Science and Technology

ACTION: Amended notice of meeting.

CHANGES: The President's Council of Advisors on Science and Technology (the "Council") is currently holding a series of public meetings around the country as announced in 57 FR 23604-605 (June 4, 1992). This amendment is to provide notice of the precise location for the public meetings in Durham, North Carolina and Washington, DC.

DATES AND LOCATIONS: On July 21, 1992, the Council will meet at Duke University from 8:30 a.m. to 3:30 p.m. following the agenda set out in the **Federal Register** notice referenced above. This meeting will be held at The Fuqua School of Business, Geneen Auditorium. The Fuqua School's entrance is accessible by walking through the R. David Thomas Center, One Science Drive, Durham, NC. Public Parking will be available in lot 751, directly in front of the R. David Center.

On July 24, 1992, the Council will meet at the National Academy of Sciences from 8:30 a.m. to 3:30 p.m. following the agenda set out in the **Federal Register** notice referenced above. This meeting will be held in the Lecture Room at the National Academy of Sciences, 2101 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Alicia Tenuta, Office of Science and Technology Policy, 744 Jackson Place NW., Washington, DC 20506 at (202) 395-3170, fax number (202) 395-5076.

Dated: July 13, 1992.

Vickie V. Sutton,

Assistant Director, Office of Science and Technology Policy.

[FR Doc. 92-17280 Filed 7-21-92; 8:45 am]

BILLING CODE 3170-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-30932; File No. SR-MSTC-92-03]

Self-Regulatory Organizations; Midwest Securities Trust Company; Proposed Rule Change Relating to Committee Composition

July 16, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on July 2, 1992, the Midwest Securities Trust Company ("MSTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. RS-MSTC-92-03) as described in Items, I, II, and III below, which items have been prepared primarily by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

MSTC proposes to amend article IV, sections 2 and 3 of its By-Laws regarding Committee composition and structure. The proposed rule change (1) eliminates the Compensation Committee, (2) formally establishes an Audit Committee, and (3) changes the required composition of the Finance Committee.

[1] U.S.C. 78s(b)(1) (1988).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to modify MSTC By-Laws to establish a more effective and current Committee structure. The proposed rule change would eliminate the Compensation Committee, which is inactive; its designated responsibilities are managed on an Exchange Complex basis.[2] The proposed rule change also formalizes in the By-Laws the requirement for an Audit Committee. Third, the proposal provides more flexibility in the structure of the Finance Committee by not mandating a fixed number of member comprise the Finance Committee.

The proposed rule change is consistent with section 17A(b)(3)(C) of the Act [3] in that it helps to assure a fair representation of members in the administration of MSTC affairs.

B. Self-Regulatory Organization's Statement on Burden on Competition

MSTC believes that no burdens will be placed on competition as a result of the proposed rule change.

C. Self-Regulatory Organization's Statement of Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments have not generally been solicited or received regarding the proposed rule change.

[2] The functions of MSTC's Compensation Committee are performed by the Compensation Committee of the Midwest Stock Exchange, the parent corporation of MSTC. Telephone conversation between J. Craig Long, Vice President, General Counsel, and Secretary, MSTC, and Jeffrey T. Brown, Staff Attorney, Division of Market Regulation, Commission (July 7, 1992).

[3] 15 U.S.C. 78q-1(b)(3)(C) (1988).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve the proposed rule change or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-referenced self-regulatory organization. All submissions should refer to File No. SR–MSTC–92–3 and should be submitted by August 12, 1992.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–17258 Filed 7–21–92; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Boston Stock Exchange, Incorporated

July 16, 1992.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Davstar Industries, Ltd.
Class A Common Stock, No Par Value (File No. 7–8769)
Transportacion Maritima Mexicana S.A. de C.V.
American Depository Shares, No Par Value (File No. 7–8770)
Superior Industries International, Inc.
Common Stock, $.50 Par Value (File No. 7–8771)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before August 6, 1992, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92–17194 Filed 7–21–92; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Incorporated

July 16, 1992.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f–1 thereunder for unlisted trading privileges in the following securities:

North American Mortgage Company
Common Stock, $.01 Par Value (File No. 7–8756)
Sport Supply Group, Inc.
Common Stock Purchase Warrants expiring February 28, 1997 (File No. 7–8757)
Mitchell Energy & Development Corp.
Class B Common Stock, $.10 Par Value (File No. 7–8758)
Mitchell Energy & Development Corp.
Class A Common Stock, $.10 Par Value (File No. 7–8759)
Praxair, Inc.
Common Stock, $.01 Par Value (File No. 7–8760)
Saatchi & Saatchi Company Plc
New American Depositary Shares (each representing three Ordinary Shares of 25 p each) (File No. 7–8761)
Sea Container Ltd.
Class A Common Shares, $.01 Par Value (File No. 7–8762)
China Fund, Inc.
Common Stock, $.01 Par Value (File No. 7–8763)
Nymagic, Inc.
Common Stock, $1.00 Par Value (File No. 7–8764)
Teleconcepts Corporation
Common Stock, $.01 Par Value (File No. 7–8765)
CCP Insurance, Inc.
Common Stock, No Par Value (File No. 7–8766)
General Motors Corporation
Depositary Shares (each representing 1/4 of a share of Series D 7.92% Preference Stock), $.10 Par Value (File No. 7–8767)
Banco Commercial Portugues, S.A.
American Depositary Shares (each representing one share, Par Value 1,000 Portuguese Escudos) (File No. 7–8768)

These securities are listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before August 6, 1992, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92–17195 Filed 7–21–92; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Pacific Stock Exchange, Incorporated

July 16, 1992.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Banco Commercial Portugues S.A.
AmericanDepositary Shares (representing 1 share, Portuguese Escudos 1,000 per share) (File No. 7–8772)
Champion International Corporation
Common Stock, $.50 Par Value (File No. 7–8773)
Travelers Corporation
Series B Preference Stock (File No. 7–8749)
Nymagic, Inc.
Common Stock, $1.00 Par Value (File No. 7–8750)
Georgia Power Company
$1.9875 Class A Pfd. Stock (File No. 7–8751)
Chase Manhattan Corporation
Preferred Stock, No Par Value (File No. 7–8752)
North American Mortgage Company
Common Stock, $.01 Par Value (File No. 7–8753)
China Fund, Inc.
Common Stock, $.01 Par Value (File No. 7–8754)
CCP Insurance, Inc.
Common Stock, No Par Value (File No. 7–8755)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before August 6, 1992, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92–17196 Filed 7–21–92; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Incorporated

July 16, 1992.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Travelers Corporation
Series B Preference Stock (File No. 7–8749)
Nymagic, Inc.
Common Stock, $1.00 Par Value (File No. 7–8750)
Georgia Power Company
$1.9875 Class A Pfd. Stock (File No. 7–8751)
Chase Manhattan Corporation
Preferred Stock, No Par Value (File No. 7–8752)
North American Mortgage Company
Common Stock, $.01 Par Value (File No. 7–8753)
China Fund, Inc.
Common Stock, $.01 Par Value (File No. 7–8754)
CCP Insurance, Inc.
Common Stock, No Par Value (File No. 7–8755)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before August 6, 1992, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92–17197 Filed 7–21–92; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–30920; File No. S7–18–92, International Series Release No. 420]

U.S. Equity Market Structure Study

AGENCY: Securities and Exchange Commission.

ACTION: Advance notice of possible commission action and request for information and public comment.

SUMMARY: The Securities and Exchange Commission ("Commission") today announces that the Division of Market Regulation ("Division") is undertaking a study of the structure of the U.S. equity markets and of the regulatory environment in which those markets operate. Information and comment are being sought with regard to the functioning and characteristics of the U.S. equity markets, as well as with respect to regulatory issues that arise from the structure of this marketplace. The Division is soliciting from interested commentators any viewpoints and information on the structural issues that face the U.S. equity markets today, as well as data supporting the viewpoints expressed. As part of its study, the Division will review the information, data, and comments received concerning the issues raised in this release and any other, related issues that commentators choose to raise. The Division expects to use the information and comments extensively as a part of its process in making recommendations to the Commission on rulemaking or any other necessary or appropriate action.

DATES: Comments must be received on or before October 20, 1992.

ADDRESSES: Persons wishing to submit comments should file ten copies with Jonathan G. Katz, Secretary, Securities and Exchange Commission, Mail Stop 6–9, 450 Fifth Street, NW., Washington, DC 20549. All comments should refer to File No. S7–18–92 and will be available at the Commission's Public Reference Room.

FOR FURTHER INFORMATION CONTACT: Howard Kramer, Senior Special Counsel and Market Study Coordinator, Division of Market Regulation, Securities and Exchange Commission, Mail Stop 5–1, 450 Fifth Street, NW., Washington, DC 20549. Telephone (202) 272–2403.

SUPPLEMENTARY INFORMATION:

I. Introduction

The United States has the largest, most diverse, and most innovative securities markets in the world. The continued strength and vitality of the securities markets, especially the equity markets, are critical to the economic welfare of all Americans. In the past two decades, however, these markets have undergone extensive change, and, considering the continuing developments in technology and trading trends, it is likely that the upcoming decade will see changes of at least equal magnitude.

Accordingly, on December 5, 1991, Chairman Richard C. Breeden announced that the Division would undertake a study, entitled Market 2000, of the U.S. equity marketplace.[1] This

[1] See Address by Richard C. Breeden, Chairman, Securities and Exchange Commission, before Securities Industry Association, December 5, 1991.

concept release (i) outlines the general purpose, scope and objectives of the Division's study; (ii) poses questions on critical equity market structure issues; and (iii) requests information from market participants and observers regarding certain issues the Division believes relevant to its study. In particular, the Release solicits information (including statistical information), comments and views regarding current equity market trading practices and structures and the impact thereon of the current regulatory framework. Finally, the Release solicits comments and views on any issues that commentators believe the Division should address in addition to those discussed in this Release.

II. Background

Twenty years ago, the Commission and market participants undertook a careful and thorough examination of the equity markets and their regulatory structure.[2] At that time, serious questions had surfaced concerning the equity markets' fundamental structure, including issues of market fragmentation, best execution of customer orders, transaction costs, transparency and liquidity. As a result of that review and the Congressional hearings which followed, Congress enacted amendments to the federal securities laws to establish a national market system for securities.[3]

Since that time, the U.S. equity markets have developed dramatically in size, participants, and trading methods. For example, in 1975 the average daily volume on the New York Stock Exchange ("NYSE") was 18.6 million shares, but by 1991 it had increased almost tenfold, to approximately 179 million shares. Further, while American households dominated share holdings in 1975 (holding 70% of the total equities outstanding, with institutions holding only 21%), as of 1990, the institutional percentage had risen to 53.3%, while that held by households had fallen to 46.7%.[4]

Moreover, the National Association of Securities Dealers ("NASD") NASDAQ system, which began operations in 1971, is now one of the largest stock markets in the world, with trading valued at $694 billion in 1991.

The nature of equity trading has similarly evolved. The past decade has witnessed a concentration of equity holdings within several groups of institutional investors, including pension funds, mutual funds, and institutional money managers.

The growth of large public pension fund equity holdings alone has resulted in equity market participants that dwarf those of two decades ago, when the Institutional Investor Study was conducted. Moreover, there has been a similar growth in the volume of trading activities of broker-dealers, hedge funds, and other market professionals, and a large increase in foreign investment in U.S. equities. Today, institutional investors (both customer and broker-dealer) dominate daily trading, accounting for an estimated 75% to 80% of the average daily volume on the NYSE.[5]

Along with the growth of large institutional investor influence has come the increasingly significant role of equity derivative products. When the 1975 amendments to the Securities Exchange Act of 1934 ("Act") were adopted, the only standardized equity derivative products in existence were call options on several stocks. Only 10 years later, the derivative markets were trading options on hundreds of stocks, as well as index options, index futures and futures options on a dozen stock indices. The trading volume in stock index options and stock index futures by the mid-1980s had outstripped the value of stock trading on the NYSE.[6] Trading strategies involving these products have significantly altered the nature of the stock market. Program trading, index arbitrage, cash substitution, synthetic equities, and other derivative product strategies are now used constantly by broker-dealers and their institutional customers. Moreover, derivative products have facilitated the use of passive management or "indexation" strategies by large investors.

The growth of derivatives has been matched by dramatic advances in securities trading technology. Both securities markets and broker-dealers have increased the power and speed of technologies for order routing and execution, information dissemination, and trade and portfolio analysis and decisionmaking. This enhanced technology has facilitated growth in trading volume and efficiency, as well as derivative-related strategies.

Finally, the unfixing of commission rates in 1975 has had a profound effect on market participants and on competition among them. The resultant shrinkage, to pennies a share, of commission rates charged to institutional investors and the growth of retail discount brokers have significantly changed the nature of equity brokerage practices. Not least among these changes has been the growth of third party soft dollar practices and payment for order flow. A soft dollar arrangement involves a relationship between a money manager and a broker-dealer whereby a money manager uses the commissions generated from trades of its client accounts to obtain research, brokerage, or other services from or through a broker-dealer.[7] Payment for order flow is the practice of market makers or exchange specialists compensating broker-dealers for directing customer orders to them. Both practices raise issues relating to whether and, if so, how compensation for directed order flow affects the execution of customer orders.

In response to all of these changes, the organized equity markets and entrepreneurs operating independently of the markets have exhibited innovation, flexibility, and keen competitive drive in devising accommodations or alternatives to the markets, structure and practices. These accommodations and alternatives, however, raise questions about the regulatory environment in which the markets operate. Issues related to the proper allocation of regulatory (including self-regulatory) responsibilities, the need for enhanced transparency, transaction costs and market fragmentation once again pose

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[2] *See* Institutional Investor Study Report of the Securities and Exchange Commission, H.R. Doc. No. 64, 92nd Cong., 1st Sess. pt.1 (1971); Statement of the Securities and Exchange Commission on the Future Structure of the Securities Markets (1972), 37 FR 5286; and SEC, Policy Statement on the Structure of a Central Market System (March 29, 1973), as reprinted in, [1973] Sec. Reg. & L. Rep. (BNA) No. 196 at D-1 (April 4, 1973).

[3] Pub. L. No. 94-29 (June 4, 1975). See, *e.g.*, 15 U.S.C. § 78k-1, which directed the Commission to facilitate the establishment of a national market system for securities; and Committee of Conference, Conference Report to Accompany S.249: Securities Acts Amendments of 1975, H. Conf. Rep. No. 94-229, 94th Cong., 1st Sess. 91-98 (1975).

[4] Institutional Investors and Capital Markets: 1991 Update, Columbia Institutional Investor Project, Center for Law and Economic Studies, Columbia Univ. School of Law (Sept. 1991).

[5] See Power, *Small Investor Continues To Give Up Control of Stocks*, The Wall Street Journal, May 11, 1992, at C1.

[6] See The October 1987 Market Break, A Report by the Division of Market Regulation (Feb. 1988), Chapter 3 at 3-1.

[7] Ordinarily, a fiduciary that uses the assets of its managed accounts for its own benefit would be subject to claims of a breach of fiduciary duty under state and federal law. In 1975, Congress adopted section 28(e) of the Act, which, under certain conditions, protects a money manager from claims of a breach of fiduciary duty should the money manager pay a commission rate higher than the rate charged by another broker-dealer to a broker-dealer providing it research and brokerage services, as defined in section 28(e)(3). 15 U.S.C. 78bb(e). See also Securities Exchange Act Release No. 23170 (April 23, 1986), 51 FR 16004.

significant challenges to regulators and market participants alike.

Moreover, as technology has made it possible for new trading strategies and market services to develop, it also has made it feasible for alternative market systems to develop at the periphery of the current market structure.[8] When Congress enacted legislation in 1975 mandating the development of a National Market System, it understood that the markets may no longer need to be physical places. Similarly, the advances in trading technology and telecommunications in the last five to ten years have once again raised issues relating to off-exchange trading systems. Market forces of supply and demand today can be, and to a large extent are, channeled through automated systems, but the automation frequently is off exchange floors.

To date, technological and competitive developments appear to have benefited investors by sharply reducing transaction costs. Moreover, most indications are that fragmentation adversely affecting the general quality of equity markets has not yet occurred. Nevertheless, some trading that previously would have been effected on the primary exchanges, the regional exchanges, or alternative market facilities that make real-time reports of trades is not subject to real-time reporting mechanisms. Likewise, some of the alternative systems, especially those that permit trading outside of traditional trading hours, provide public reports only in the aggregate and not on a real-time basis. In addition, the possibility of fourth market trading, that is, trading directly between institutional investors without the intervention of an intermediary, may divert further trading away from organized markets or market systems.[9] Finally, trades estimated at several million shares U.S. equities a day are executed in foreign markets, principally in London. The amount of this foreign trading that actually occurs in an organized foreign market, however, as opposed to internalized executions by the foreign desks of large U.S. broker-dealers, may be much smaller.

As if often the case, the regulatory structure for both existing markets and alternative systems has evolved in part as a series of case-by-case responses to particular issues or proposals. Moreover, the approach to the assignment of self-regulatory responsibilities to existing markets and to the regulation of alternative systems was developed in a very different market context than is present today. Issues related to market fragmentation, equal regulation of markets operated by competing self-regulatory systems, and rules relating to quotation and transaction reporting (*i.e.*, market transparency) begin to take on a very different aspect when factors such as off-exchange trading systems, program trading, equity swaps, fourth market trading, soft dollar practices, and international trading are introduced.

It does not appear that any of these issues poses an immediate threat to the quality of U.S. equity markets. Nonetheless, to ensure that U.S. equity markets remain vibrant and economically efficient, the time is ripe for a thorough examination of the role that Commission-administered statutes and Commission and self-regulatory organization ("SRO") rules play in the economic well-being of the equity marketplace and the competitive environment in which the markets and their participants operate.

In recent years, the Commission has discussed some of the issues posed in this Release in various rule proposals of the SROs, in congressional correspondence [10] and in a release proposing Rule 15c2–10, which would establish a formal regulatory structure for proprietary trading systems.[11] As the Commission reviewed these issues, it became apparent that all of these and other related issues need to be addressed in a conceptually consistent manner. Rather than continuing a piecemeal approach to the predominant issues facing the market and its regulatory structure, the Division now seeks to examine the overall structure of equity market regulation, including its impact on the relationship of the primary and regional exchanges, exempt exchanges, the over-the-counter ("OTC") market and proprietary trading systems, and the proper and equitable assignment of regulatory and self-regulatory costs among these markets.

A focus of the study will be to ensure that regulators and others continue to craft an approach preserving the contributions of alternative systems, such as competition, innovation and reduced costs, while taking into account their overall effect on the fairness and efficiency of the market as a whole. To accomplish this, the Division will study the impact of regulation on the various components of the equity market and the manner in which access to those market components may be limited or hindered by ineffective, outdated, or misallocated regulatory burdens. In addition, the study will examine the assignment of the costs of self-regulation and whether such costs should be reallocated to facilitate fair competition, while maintaining the efficiency of the market and investor protection.

An important objective will be to determine the proper role of the Commission in overseeing the continuing development of the equity markets. There have been widespread differences of opinion over the role the Commission has played over the past 17 years in oversight of the equity market structure. One viewpoint would have the Commission exercising more initiative in the process, while a different viewpoint would lead to less governmental action to alter, shape, or direct market forces. Whatever the merits of either view, all those interested in the development of healthy equity markets—investors, issuers, the SROs, market professionals, and Congress—have frequently looked to the Commission to resolve or mediate the seemingly intractable market issues that continually arise. Accordingly, the Division is interested in exploring the proper degree of Commission oversight of the functioning of U.S. equity markets.

The Division invites commentators to address these broad issues as well as the more specific issues identified below. Commentators also may address the standards, scope, and objectives of the study outlined below, and propose other issues that they believe should be included in the study.

III. Scope and Objectives of the Study

A. Standards For Study

In the course of the study, the Division plans to review the structures and the regulations that shape the equity marketplace. The examination will initially use the statutory objectives put in place by the 1975 amendments to the Act to analyze current equity market rules and structures, such as whether they are necessary and appropriate for the protection of investors; whether they promote fair, orderly, and efficient markets; and whether they continue to promote fair competition among brokers

[8] See, *e.g.*, Wunsch Auction Systems, Inc., Securities Exchange Act Release No. 28899 (February 20, 1991), 56 FR 8377.

[9] As used in this release, the term "fourth market" means a market where institutions deal directly with each other without the intermediation of any broker-dealer. This market has the potential to develop, especially as technology fosters the ability of market participants to trade directly without intermediation.

[10] See letter from Richard C. Breeden, Chairman, SEC, to Edward Markey, Chairman, Subcommittee on Telecommunications and Finance, U.S. House of Representatives, dated July 11, 1991. A copy of this letter is appended to this release as appendix A.

[11] See Securities Exchange Act Release No. 26708 (April 11, 1989), 54 FR 15429.

and dealers, among exchange markets, and between exchanges and markets other than exchanges.[12] During the course of the study, the Division will also explore whether those objectives should be modified.

B. Scope of Study

The Division believes that the scope of this study should be limited to an examination of the issues affecting the U.S. equity markets. In particular, the study will review the primary and regional exchanges, the over-the-counter market (with particular attention to the third market, *i.e.*, trading of exchange-listed securities in the over-the-counter market), proprietary trading systems for publicly-held U.S. equities, non-intermediated trading in such securities, and trading in U.S. equity securities effected by U.S. broker-dealers on overseas markets. This focus, of course necessarily entails examining certain trading practices and techniques involving derivative products that affect the U.S. equity markets.

Clearly, the emergence of derivative trading strategies has influenced substantially the operation of the equity markets, and the study will take this impact into account.[13] However, the main thrust of the study will focus on regulation of the equity market because of its preeminent importance to the nation for capital raising and investment.

In addition, the study will not examine issues involving penny stock trading, except to the extent that the SROs attempt to use listing standards to obtain a competitive advantage. Finally, the study will not examine corporate governance issues and international markets (except as noted above).

C. Objectives of the Study

Upon conclusion of the fact and comment gathering portions of the study, the Division will examine and analyze the regulatory structure of the equity market in light of the information obtained. In this analysis, the Division will seek to identify those areas where there are deficiencies or where a new approach should be explored. Based on its findings, the Division may recommend to the Commission that it propose legislative or regulatory revisions. Moreover, the Division hopes to produce a framework for addressing equity market issues in the future, much as section 11A was intended to do when it was added to the Act in 1975. It must be noted that the Division does enter into this process with any preconceived notions concerning potential findings or recommendations. Indeed, the goal set by Chairman Breeden for the Division is to examine the issues affecting the entire equity market in the greatest depth feasible.

In conducting the study, the Division is not trying to dictate what the structure of the equity markets should be in the year 2,000. That determination should be made by the markets and their participants as a result of competition. However, that competition should not be skewed by inequitable regulation or allocation of self-regulatory cost, beyond that which is necessary for the protection of investors.

IV. Issues

A. Market Structure and Operations

Several distinct and competing market structures have evolved in U.S. equity markets. These are: the continuous auction market or, as it is more commonly described, the exchange market;[14] the dispersed dealer market, *i.e.*, the U.S. OTC market (with NASDAQ a hybrid variation of this); the centralized dealer market, represented by the Cincinnati Stock Exchange's ("CSE") National Securities Trading System; proprietary trading systems, such as Instinet (owned by Reuters) and POSIT (owned by Jefferies & Company, Inc.); and the fourth market, in which investors trade directly among themselves.

In the last two decades the U.S. markets have experienced what some perceive to be a significant shift in trading volume away from the traditional auction market structure towards alternative structures and derivative markets.[15] To some extent, this evolution can be directly attributed to some of the previously described trends of the last 20 years: the growing impact of large institutional investors, the unfixing of commission rates, the proliferation of derivative products, and advances in trading technology and telecommunications. As a result, the largest institutional investors and money managers tend to be sophisticated market participants with the leverage and economies of scale to reduce their trading costs, and they have turned increasingly to alternative market structures and new equity and derivative products in an attempt to do so.[16]

Market	1981 volume	1991 volume	1981 trades	1991 trades
NYSE	86.66%	82.26%	82.42%	67.33%
Regional Exchanges	10.88	11.78	16.60	23.11
Third Market	2.33	5.82	0.96	9.53
Instinet	0.13	0.14	0.02	0.03

New York Stock Exchange Fact Book, at 24–25 (1992).

Section 11A of the Act has to a large extent fostered the development of this highly competitive situation. As noted above, Section 11A has as one of its stated goals "fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets".[17] However, this is not the only goal that the Commission was directed to address in facilitating a National Market System. That section also sets forth the following goals and objectives of the National Market System:

a. The economically efficient execution of securities transactions;

b. The availability to market participants of quotation and transaction data;

c. Enhancement of a broker's ability to execute customer orders in the best market; and

d. The opportunity, consistent with the other identified goals, for customer orders to be executed without the intervention of a dealer.

The concept of a National Market System was premised on the need for integrated market facilities when multiple markets trade the same securities. In 1975 Congress was concerned with several specific problems: Market fragmentation resulting from a market structure driven by fixed commission rates and comprised of geographically separated markets trading the same security; the institutionalization of the markets; and barriers to competition among markets

[12] 15 U.S.C. 78k–1(a)(1)(C)(ii) (1991). Section 11A (a)(1)(C)(ii) of the Act.

[13] For example, the extent to which derivative products and related hedging strategies drive equity transaction volume and shape equity investment and trading strategies and market liquidity will be examined. In contrast, the study will not address market structure or regulatory issues involving derivative products, such as the multiple trading of options, or intermarket issues such as the jurisdiction of hybrid products or margins on stock index futures.

[14] Stock exchanges currently exist at the New York Stock Exchange and the American Stock Exchange (the primary exchanges) and the Boston, Cincinnati, Midwest, Pacific, and Philadelphia Stock Exchanges (the regional exchanges). The Chicago Board Options Exchange has the authority to trade stocks, but has not yet done so.

[15] Consolidated Tape Volume and Trades in NYSE-Listed Stocks;

[16] We use "trading costs" in the broadest sense. Not only do institutions frequently try to lower their commission costs, but they also endeavor to reduce their "pricing costs," *e.g.*, by avoiding impact trades (large trades that are priced outside of the current bid or offer) or by trading between the spread.

[17] See, *supra*, note 12.

that existed at that time. In response to these concerns, Congress provided the Commission, working with the industry, with broad authority to institute changes in the existing market structure to address the perceived problems, while seeking to achieve the various goals contained in section 11A.

Following enactment of the statutory mandate to create a "national" market, several important facilities were developed. These include the Consolidated Tape Association ("CTA"), the Consolidated Quotation System ("CQS"), and the Intermarket Trading System, ("ITS"). The CTA provides for the dissemination of the consolidated last sale prices for NYSE and American Stock Exchange ("Amex") stocks (and regional exchange issuers that substantially meet Amex listing standards). The prices and volume of trades in these stocks, regardless of the market in which the trade takes place, are disseminated to vendors (such as Quotron and Bridge Data) over high speed data transmission lines. The CQS gathers quotations from all market makers in exchange-listed stocks and disseminates them to vendors. The CTA last sale and CQS quotation information are publicly available through vendors' desktop terminals. The implementation of a consolidated tape and a consolidated quote enabled regional exchange specialists and third market makers to compete effectively with specialists on the primary markets, facilitated broker-dealers' efforts to obtain the best execution of their customers' orders, and helped customers to monitor the executions they received.

ITS is a communications system designed to facilitate trading among competing markets by providing each market with order routing capabilities based on current quotation information. The system links the participant markets and provides facilities and procedures for: (1) The display of composite quotation information at each participant market, so that brokers are able to determine readily the best bid and offer available from any participant for multiply traded securities; (2) efficient routing of orders and sending administrative messages (on the functioning of the system) to all participating markets; (3) participation, under certain conditions, by members of all participating markets in opening transactions in those markets; and (4) routing orders from a participating market to a participating market with a better price.[18]

ITS was an important addition to the National Market System because it increased the opportunities for brokers to secure the best execution of their customers' orders without developing order-by-order routing systems. In addition, it permitted regional specialists to attract orders from other markets by providing superior quotations and facilitated their marketmaking by enabling them to lay off their risk positions more efficiently, and at a lower cost, through offsetting transactions on primary markets.[19] In conjunction with the ITS, the exchanges and NASD adopted certain rules that require their members to avoid effecting trades at prices inferior to those displayed by another market.

At the time these facilities were implemented, some believed that they substantially addressed the structural problems that had led to the enactment of section 11A.[20] However, the markets have evolved significantly since then. Thus, the Division has been asked to reexamine whether the current facilities adequately address problems of market structure.

Many of the concerns with the current market structure that some commentators have identified are similar to those that led to the enactment of section 11A. For example, some commentators have noted what they perceive to be structural impediments to competition among various markets.[21] Other commentators have argued that the current competitive environment has resulted in excessive market fragmentation and a concomitant decreased efficiency and, at times, liquidity.[22] In addition, a serious question has arisen whether the increase in non-traditional trading facilities, including in particular after-hours trading facilities, has eroded both the transparency of U.S. markets and the ability to obtain the best execution of customer orders. All these issues are discussed more fully below.

B. Market Competition

The U.S. equity markets are highly competitive, with intense competition for order flow in listed stocks between primary and regional exchanges and between exchanges and the OTC market. In addition, competition in OTC stocks between the regional exchanges and the OTC market is in its infancy.[23]

In fact, it is this competition among a number of different "markets," using that term broadly to include proprietary trading systems, third market makers and the fourth market, that some commentators believe has led to harmful fragmentation of the equity markets. On the other hand, some commentators view this competition as invigorating and decry what they see as structural impediments to competition between markets. For example, the NYSE has long maintained that its Rule 390, which limits to a certain degree exchange members' ability to effect transactions in listed securities in the OTC market, is necessary to prevent dispersion of order flow into unconnected markets.[24] The NYSE believes that such fragmentation would impair price discovery and liquidity in the primary market. Critics of Rule 390 argue that it prevents large NYSE members from competing as market makers with NYSE specialists,

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[18] The NASD's Computer Assisted Execution System ("CAES") currently links NASD market makers for order routing and execution purposes to ITS for securities for which Rule 19c-3 of the Act prohibits off-board trading restrictions.

[19] The ease of regional specialists in laying off their risk in the primary market has raised important questions regarding their role as market makers and the degree of their access to the primary market. *See* note 25 *infra*.

[20] For a contrary view, see, *e.g.*, Seligman, "The Future of the National Market System, 10 J. Corp. Law 79 (Fall, 1984) (discussion of areas of concern in development of the National Market Systems.)

[21] See, *e.g.*, U.S. General Accounting Office, "Securities Trading: SEC Action Needed to Address National Market System Issues," GAO/GGD-90-52 (March, 1990).

[22] See, *e.g.*, letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Jonathan G. Katz, Secretary, SEC, January 7, 1991 (comments on WASI application for exemption from exchange regulation) ("NYSE letter").

[23] On April 29, 1987, the Commission approved a transaction reporting plan submitted by the NASD and the Midwest Stock Exchange ("MSE") governing the collection, processing and dissemination of quotation and transaction information in certain OTC securities traded on an exchange on a listed or unlisted basis ("Interim Plan"). On the same day, the Commission approved the MSE's application for unlisted trading privileges ("UTP") in 25 OTC securities. Since that time, the MSE has been trading certain OTC securities on a UTP basis pursuant to those two orders. *See* Securities Exchange Act Release Nos. 24407 (April 29, 1987), 52 FR 17349; and 22406 (April 29, 1987), 52 FR 17495.

[24] Rule 390 prevents NYSE members from effecting transactions in any NYSE listed stock in the over-the-counter market, either as a principal or agent. The rule contains certain exceptions, such as trading an NYSE stock on an organized exchange in a foreign country. In addition, the rule permits NYSE members to trade NYSE listed stocks in a foreign over-the-counter market outside of NYSE trading hours. Pursuant to Rule 19c-3 of the Act, Rule 390 does not apply to a security first listed on a national securities exchange after April 26, 1979. In addition, pursuant to Rule 19c-1 under the Act, Rule 390 does not apply to a member effecting an agency transaction in a NYSE-listed stock in the over-the-counter market.

and that if such competition were allowed, quotation spreads would narrow and market making capital would increase.

The competition between markets has generated other controversial market practices, such as payment for order flow, that have been the subject of debate as to their effect on the equity markets. For example, the primary exchanges often complain that certain regional exchange practices, such as the affiliation of regional specialist firms with upstairs firms as a means of directing order flow, distort competition. In turn, the regional exchanges have expressed great concern about certain primary market proposals, such as the NYSE's after-hours trading session and the Amex's competing dealer proposal.[25]

In addition, the exchanges believe that they are at a significant competitive disadvantage to both proprietary trading systems and third market makers. The exchanges, as SROs, have certain statutory obligations not currently imposed on proprietary trading systems.[26] They believe these obligations, or, conversely, the absence of similar obligations on proprietary trading systems and third market makers, impose a burden on their ability to compete with these systems. Moreover, there is even a lack of agreement among the SROs over the allocation of regulatory obligations and costs among SROs.[27]

Finally, the growth of offshore trading has affected competition. For a number of reasons, market participants (usually broker-dealers, and not the institutional customers) often choose to direct order flow in U.S. stocks to foreign markets. The overseas market could take the form of an exchange market, such as the Tokyo Stock Exchange, or could simply be an over-the-counter market abroad. In the latter case, the U.S. broker-dealer usually is acting as principal with its customer and is merely "booking" the trade in one of its foreign offices. Indeed, this market has been called the "fax" market because the U.S. customer and U.S. broker-dealer agree to terms of the trade involving U.S. stocks in the U.S., and the broker-dealer merely faxes the order slip to a foreign desk for execution.[28] Thus, this trading may be "overseas" in name only, with a foreign facade used to evade trade reporting requirements, exchange fees, or regulatory requirements in the U.S.

Though some foreign trading may be a bookkeeping fiction, there has been a growth of genuine foreign trading in U.S. stocks as foreign holders of U.S. securities seek to be able to trade during their normal operating hours. U.S. holders of U.S. equities also may seek to adjust their portfolios after normal U.S. trading hours in light of news events with market implications or for other economic reasons. As noted above, a portion of foreign trading in U.S. equities by U.S. broker-dealers of institutions is done to avoid off-board trading restrictions, transparency standards in the U.S. markets, transaction fees [29] and other rules, such as the Commission's short sale rule,[30] as well as cost considerations. The SROs believe that the lack of comparable regulatory obligations on broker-dealers executing orders overseas imposes a competitive burden on U.S. markets.

Commentators are asked to address the competitive issues discussed in this subsection, and to identify any other impediments to competition and market efficiency, stability and fairness. In addition, commentators are asked to discuss any rules, requirements, or practices they believe are unwise, including those identified above. Commentators should discuss any areas where coverage of rules should be expanded and any areas where rules should be eliminated.

The Division also is interested in receiving comments on the relative costs—both regulatory and non-regulatory—of executing transactions in U.S. equities in foreign markets or foreign equities in U.S. markets. Specific comparisons of the cost of executions in various markets would be very helpful, as well as a description, in order of priority, of the business reasons for selecting a particular market to execute or book different types of transactions. Analysis of the effect of specific regulatory requirements also would be helpful.

Finally, the Division is interested in whether commentators believe there are any regulatory anachronisms, lingering inefficiencies, rules or requirements whose costs exceed their benefits, or anti-competitive Commission or SRO rules in the existing market structures. Commentators are asked to address the extent to which Commission or SRO rules, such as NYSE Rules 390 and 500, harm or help fair competition.[31] At the same time, the Division requests that commentators address how altering the current competitive balance would affect investor protection.

C. Market Fragmentation

1. General Issues

As trading of exchange-listed securities in off-exchange systems increases, some commentators suggest that the market for these securities could become increasingly fragmented.[32] Paradoxically, the very technologies that permit and, indeed, drive such fragmentation can also be employed to link markets together.

In 1975, Congress mandated that the Commission "facilitate the establishment of a national market system" and provided the Commission the authority to address the market fragmentation confronting the markets

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[25] The Commission temporarily approved the NYSE after-hours trading session in Securities Exchange Act Release No. 29237, International Series Release No. 275 (May 24, 1991), 56 FR 24853 (May 31, 1991) (File Nos. SR-NYSE-90-52 and SR-NYSE-90-53).

The competing dealer proposal, as amended, would designate all orders in Amex stocks sent by regional stock exchange specialists or third market makers in those stocks as orders for "competing dealers." These orders would have to yield priority to all orders except those of the Amex specialist (and the on-floor proprietary orders of Amex members pursuant to Section 11(a) of the Act). The Amex specialist would continue to yield to competing dealer orders.

The Commission noticed the competing dealer proposal in Securities Exchange Act Release No. 28741 (January 3, 1991), 56 FR 1038. Notice of Amendment No. 1 appeared in Securities Exchange Act Release No. 30161 (January 7, 1992), 57 FR 1502. The Commission has received substantial comment on the proposal.

[26] for example, the exchanges have to file their proposed rule changes with the Commission for approval, develop and administer qualification examinations for their members, and conduct on-site compliance inspections of their members. These and other regulatory responsibilities are not imposed on proprietary trading systems or third market makers.

[27] See, *e.g.*, Securities Exchange Act Release No. 26341 (December 5, 1988), 53 FR 49809 (December 9, 1988) (File No. SR-NYSE-88-35). See *also*, National Market Advisory Board, The Possible Need for Modifications of the Scheme of Self-Regulation in the Securities Industry So As To Adapt it to A National Market System, December 31, 1976, which proposed the creation of an SRO coordinating entity.

[28] Despite their nominal execution abroad, these trades may be subject to the U.S. securities laws in the same manner as third market trades that are completely handled by a trading desk in the U.S.

[29] Under section 31 of the Act, fees of 1/300th of one percent of the value of a trade are imposed on all transactions in listed securities, except to the extent that market participants effect those trades in foreign markets. 15 U.S.C. 78ee (1988). These fees are also imposed upon broker-dealers effecting transactions in listed stocks in the third market. Section 31 fees are not imposed upon securities that trade only in the OTC market and are not listed on an exchange. Like all transaction fees, these fees can have a tendency to divert transactions to other markets unless similar fees are imposed abroad or overall transaction costs are lower in the U.S. due to other factors.

[30] 17 CFR 240.10a-1.

[31] Rule 500 places requirements on issuers that want to delist from the NYSE.

[32] See NYSE letter *supra* at note 22.

in the early 1970s.[33] An important issue facing the market again today is the extent to which harmful equity market fragmentation has occurred, that is, fragmentation that impairs liquidity and price discovery, and whether it is possible (or even desirable) to prevent such fragmentation. The Division solicits comment on the extent of fragmentation that exists in the market today and the development of future trends toward or away from market fragmentation. The Division seeks to obtain statistical information regarding the degree to which commentators believe such fragmentation exists. Commentators also are invited to address the causes and effects of fragmentation and suggest approaches that could be taken to eliminate any harmful fragmentation. In addition, commentators should address how to reconcile the goals of reducing harmful fragmentation and promoting fair competition.

In analyzing fragmentation, the Division also seeks to understand not only the degree to which observers believe that a central marketplace has been fragmented, but also the degree to which the marketplace has split into separate tiers of investors. For example, the question has been raised whether the marketplace is separating into institutional and retail marketplaces.[34] In particular, the Commission has been asked whether electronic trading system proliferation poses the potential for "balkanizing" our nation's securities markets into a two-tiered system—one for large institutional traders and another for individual investors.[35] In response to this inquiry, the Division stated its belief that concerns about harmful market fragmentation caused by electronic trading systems for equities appear to have been minimized by the transparency of the U.S. system. Nevertheless, the Division seeks views and analysis on whether any such tiering has occurred, is increasing or decreasing and whether participants are aware of further degrees of segregation.

Another way of examining fragmentation is to analyze the phenomenon of passive market pricing. Specific U.S. equity markets can be viewed as either being price discovery or passive markets. Trading that discovers prices, such as the trading done on the floor of the NYSE or Amex or over NASDAQ, involves the interaction of buyers and sellers in negotiating the price of a security based upon supply and demand (or in NASDAQ's case, competition between market between market makers). Passive markets, such as the crossing networks established by Instinet and POSIT and the automated execution systems of regional exchanges and some third market makers, base their executions largely on the prices discovered in other markets. Frequently, large after-hours program trades, often involving an exchange for physical ("EFP"),[36] passively base the prices of the component stocks on the primary markets' closing price.

Some commentators have argued that passive trading siphons the "easy" trades away from the primary markets, which reduces the primary markets' liquidity and raises their costs.[37] In times of market stress, however, market participants using passive markets often return to the primary market, placing sudden and potentially destablizing liquidity demands on it. The passive markets, however, do offer substantial benefits, such as execution economies, efficiencies, and operating times, that may not be available in the primary market at all times. The passive markets also have provided technological advances and reduced execution fees, spurring the primary markets to respond in kind. The question arises, however, whether these benefits are subsidized by the primary markets.

The Division is interested in the implications of a growing passive market for U.S. stocks. For example, what liquidity impact does such segregation have? The Division also is interested in the fair allocation of regulatory burdens among these markets. Are passive markets "free riding" on price discovery markets, leaving the bulk of regulatory (and other) costs to the primary markets? Is there a fairer and more rational way to allocate responsibilities and costs among markets?

Finally, the potential (or actual) tiering of markets into discrete investor groups, or into active and passive markets, raises issues relating to the potential effects of any effort to recombine discrete elements into a centralized trading mechanism. The Division seeks to understand the costs and benefits of integrating individual and institutional traders in a system without harming either group, including the costs of the infrastructure of multiple markets and of any pricing disparities that exist. In addition, the Division invites comments on the extent to which derivative products have facilitated the segmentation of the equity markets.

2. Multiple Markets—Linkages

The initial, and primary, market mechanism put in place by the Commission and the SROs after 1975 to address the fragmentation that resulted from a multiple market structure was ITS. As described above, ITS has provided important benefits to the markets, broker-dealers, and investors. Nevertheless, ITS has been the subject of frequent criticism. Participants often complain that the system's operational procedures need to be improved.[38] Other commentators have criticized the system as antiquated and insufficient.[39]

The Commission has on several occasions considered whether improvements to ITS should be made. For example, in July, 1990, the Division wrote to ITS participants requesting their comments on the need for structural enhancements to ITS. In its letter the Division requested comment on three possible alternatives, including an automatic execution feature, intended to increase the probability that orders (referred to as commitments) would receive an execution in the destination market. Most of the participants strongly opposed the Division's proposals. Similarly, in an effort to provide protection to undisplayed limit orders, the Commission in 1976 proposed the addition of a consolidated limit order book, but the SROs opposed the creation of such a system as well as a Commission price protection proposal.[40] The commentators asserted that a time and price preference for public limit orders would provide a major trading advantage to those orders, thereby creating a disincentive for the commitment of market making capital by dealers, and might eventually force all trading into a fully automated trading system.

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[33] At the same time, limiting market fragmentation was not the only goal. Equally important was the assurance of fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchanges. Congress believed that these latter goals and a national market system were consistent objectives.

[34] Letter from Edward J. Markey, Chairman, Subcommittee on Telecommunication and Finance, U.S. House of Representatives, to Richard C. Breeden, Chairman, SEC, dated May 16, 1991.

[35] *Id.* at 3.

[36] An EFP involving stocks is the exchange of a long (short) futures position for an equivalently long (short) stock position. The EFP normally takes place after the NYSE close and is privately negotiated between the parties.

[37] See NYSE letter *supra* at note 22.

[38] See, *e.g.*, The October 1987 Market Break, A Report by the Division of Market Regulation (Feb. 1988), Chapter 7 at 7–48.

[39] See, *e.g.*, 5 L. Loss and J. Seligman, Securities Regulation, 2564, 2565, (3d ed. 1990).

[40] Securities Exchange Act Release No. 12159 (March 2, 1976); and Securities Exchange Act Release No. 15770 (April 26, 1979) (Price Protection for Public Limit Orders), 44 FR 26692.

The Division believes that in the course of this study, it is appropriate to re-examine the operation of ITS. The Division is interested in determining whether any changes to ITS are needed to improve its operation, particularly because the system has not been materially upgraded since its inception in 1979. In addition, commentators are asked to address whether ITS adequately serves its original purposes (particularly the protection of customer orders), whether those purposes have changed, and whether an enhanced linkage should be considered.

Commentators are also asked to address whether the development of alternative trading mechanisms, including Wunsch Auction Systems, Inc. ("WASI"), proprietary trading systems like Instinet and POSIT, and such SRO systems as the NYSE's afterhours trading system require a reconsideration of the scope of ITS. In addition, commentators should address whether the SROs' concerns in the late 1970s about a consolidated limit order book and a price protection rule are still valid in light of technological advances and market developments in the last 15 years.

3. Proprietary Trading Systems

In recent years, and most prominently in the 1980s, buyside institutions and large wire houses began to seek access to trading networks that could accord participants some commission or exchange fee savings by facilitating trading in listed securities, on an anonymous basis, outside of the traditional exchange context.[41] These proprietary trading systems—electronic trading networks operated as private businesses rather than SROs—collect indications of interest and rebroadcast those indications to participants through a single broker-dealer or designated broker-dealers. Proprietary systems also provide procedures for executing or settling transactions at volume and price levels agreed to by those participants.[42] The systems operate according to various configurations, such as (1) the passive pricing of relatively large blocks of securities, including portfolios of securities, matched during or after normal trading hours; (2) the entry of priced indications of interest and the ability to "hit" those prices; and (3) a "single price" call market in which price is discovered through the direct interaction of buy and sell orders. Currently, there are operational six proprietary trading systems that trade equity securities: (1) Instinet; (2) Instinet's after-hours "Crossing Network;" (3) POSIT; (4) Exchange Services, Inc.; (5) Portfolio Trading Services, Inc.; and (6) WASI.[43]

The Commission has faced the question of how to regulate these systems. On the one hand, the systems have been described as enabling buyers and sellers of securities to interact in a common place, albeit the "place" being a computer system instead of a trading floor. On the other hand, the systems do not provide a guarantee or expectation of liquidity or embrace the traditional exchange notion of membership.

To date the Commission has responded by dividing proprietary systems into two broad regulatory categories: (1) Non-exchange systems; and (2) exchange systems. The Division staff has treated non-exchange systems as broker-dealers, issuing no-action letters with respect to the non-registration of those systems as exchanges where it is appropriate to do so under the analysis set forth in the Commission's order in Delta Government Options Corporation.[44] These no-action letters are conditioned upon the sponsor providing the staff: (1) Quarterly reports of trading activity in the system; (2) the number and identity of system participants and of prospective participants who have been denied access to the system; and (3) at least 30 days' advance notice of contemplated material changes to the system. The system sponsor is also required to make representations that the sponsor has adopted appropriate procedures to ensure system security and that the system has sufficient capacity to accommodate the volume of trading that reasonably may be anticipated.

With respect to exchange systems, the Commission has viewed these as facilities of an exchange.[45] As such, they are regulated as any other aspect of the exchange. This includes, among other things, submission of proposed rule changes to the Commission for approval to alter the operation of the system. The Commission has granted one exchange system, WASI, an exemption from registration with the Commission as a national securities exchange.[46] That exemption is conditioned on, among other requirements, the adoption of surveillance procedures, reporting of transaction information to vendors and SROs, and trading only in registered or government securities. Most importantly, the Commission stated that it will revisit the appropriateness of the exemption if WASI's trading volume does not remain within certain parameters.[47]

The Commission's decisions on proprietary trading systems to date have reflected a case-by-case, evolutionary approach. To formulate a broader conceptual approach to the issue, the Commission solicited public comment on a proposed rule, rule 15c2–10 under the Act, that would impose on non-exchange systems a degree of regulation that represents a compromise between the full regime of regulatory requirements and limitations imposed upon SROs under the Act, and the less expansive regime of regulation applicable to registered broker-dealers.[48] Under proposed rule 15c2–10, a trading system would have been required to file with the Commission a plan describing its operation, make records available to the Commission on a regular basis and on request, permit the Commission to examine the system, and supervise the system to ensure compliance with the terms of the plan and the federal securities laws. The Commission received substantial comment on the Rule, but no action on the proposal was taken.

In addition to the issues raised in the release proposing rule 15c2–10, including whether the Commission has authority to regulate non-exchange proprietary trading systems under section 15(c)(2) of the Act, proprietary trading systems present the following issues germane to the Market 2000 study:

[41] The NYSE charges fees for transactions executed for a customer account according to transaction size. For example, a 5,000 share trade would incur a transaction fee of $13.25, in addition to any floor brokerage commission that might be charged.

[42] Automated "bulletin boards" only collect and disseminate indications of interest without providing execution or settlement procedures. They are designed to serve specialized markets that lack the degree of liquidity present in the markets for listed equity securities.

[43] POSIT and Portfolio Trading Services, Inc. ("PTSI") are portfolio matching services sponsored by registered broker-dealers that permit institutional customers to trade portfolio of stocks at prices based on primary market quotations. In addition, POSIT offers execution of single-stock orders, as well as execution at prices that represent the volume-weighted average of trading in a particular security in the primary market on a particular day.

Exchange Services, Inc. ("ESI") is an after-hours electronic bulletin board, sponsored by a registered broker-dealer, that collects and rebroadcasts participant interest in exchange-listed and OTC equities, and offers executions on an agency basis, at prices and sizes displayed through the system.

[44] Securities Exchange Act Release No. 27611 (January 12, 1990), 55 FR 1890.

[45] See section 3(a)(2) of the Act, 15 U.S.C. 78c(a)(2).

[46] Securities Exchange Act Release No. 28899 (February 20, 1991), 56 FR 6377.

[47] *Id.* at 6380.

[48] Securities Exchange Act Release No. 26708 (April 11, 1989), 54 FR 15429.

1. What are the costs and benefits of proprietary trading systems to the equity market? In seeking to promote the public interest, how should proprietary trading systems be treated?

2. The existence of systems for equity trading outside of the organized markets raises transparency concerns, particularly when trades in these systems are effected outside of the regular hours of reporting. Commentators should address the degree that transaction and quotation information generated by these systems should be subject to transparency requirements.

3. Does the attraction of trading volume away from the traditional exchanges by proprietary trading systems further fragment the market for listed securities? If so, how should such fragmentation be addressed? Is "fragmentation" simply another word for "competition"? Are there offsetting benefits, such as lower costs for users, to proprietary trading systems?

4. How should the Commission work to ensure the adequate capacity and security of these systems?

5. Should the Commission revisit how it defines an exchange? Is the exchange or non-exchange distinction still viable for determining the regulatory treatment for a market system? [49] Commentators addressing this issue may wish to offer their views on how Congress or the Commission might amend the regulatory definition of what constitutes an exchange in light of these considerations and the advances in telecommunications and automation.

4. The Fourth Market

In addition to the examples of market fragmentation mentioned above, the Division is interested in receiving commentator's views on how the Commission should respond to the expansion of the fourth market. As a threshold matter, the Division is interested in gauging the current size of this market. Commentators are requested to provide information and data on the amount and type of trading that occurs in the fourth market, and the cost of completing any such transactions relative to execution costs in other markets. In addition, the Division is interested in the trends that participants have observed or expect in this area, particularly the degree to which any such trading has grown, or is likely to grow, as evolving technology continues to lower transaction costs.

In addition, assuming that such trading may grow, the Division solicits comment on steps that can or should be taken to enhance the transparency, and to ensure adequate surveillance, of fourth market trading. Today, both regulators and market participants have only a limited ability to monitor sizes and prices of trades that occur in this market.

Commentators are asked to describe the particular costs and efficiencies that fourth market participants perceive in trading in this market versus traditional markets. In addition, the Commission solicits view on permitting, with appropriate regulation, non-intermediated institutional access to the National Market System; in particular, commentators should express views, and reasons therefor, on the benefits and costs of such access.

5. Market Liquidity

There are different viewpoints on how the interaction between market competition and market fragmentation affects market liquidity. On the one hand, those fearful of market fragmentation are concerned that multiple markets disperse order flow and impair liquidity. The contrary view holds that diverse markets enhance liquidity by providing price and service competition. In addressing the issues on market fragmentation raised in this Release, the Division invites commentators to address how market liquidity has been affected by the types of fragmentation discussed above. In this regard, commentators should not only analyze the impact on liquidity caused by diverse equity markets, but also the impact caused by alternative trading products such as derivatives.[50]

D. Best Execution

1. General

Best execution of customer orders has long been an important requirement of the federal securities laws.[51] In its purest form, best execution can be thought of as executing a customer's order so that the customer's total cost or proceeds are the most favorable under the circumstances.[52] Since the 1975 amendments to the Act, the market has made great strides in devising means to improve execution capabilities, such as ITS, the CQS, and the CTA Plan.[53] Developments since then have also raised concerns about best execution, as to both whether it is being consistently achieved and whether it needs to be redefined. For example, the development of automated execution systems based on passive pricing of primary market quotes, the practice of payment for order flow, and the growth of alternative marketplaces, among other things, have raised questions about the issue. Those developments have enabled exchanges and market makers to enhance the speed and certainty of executing brokers' orders, but perhaps at the cost of foregoing potential price improvement for the brokers' customers.

The Division solicits comment on the degree to which best execution opportunities have been affected by the changes that have occurred in the markets and the implications both for

[49] The Division is also interested in whether the choice of designating a system as exchange or non-exchange for regulatory classification is too limiting generally. Should the classification instead be based on functional attributes (*e.g.*, passive trading or price discovery market)?

[50] The Division is aware of projects recently initiated by the Group of Thirty and the General Accounting Office to examine the growing use of OTC derivative products. The Commission and SROs likewise have been examining OTC derivatives and the hedging strategies employed by the professional institutions issuing them. OTC derivatives involve credit and hedging risks that have the potential to impact the liquidity of the securities market as well as the financial soundness of the market's participants. See, Speech of Mary L. Schapiro, Commissioner, Securities and Exchange Commission, entitled "The Growth of the Synthetic Derivative Market: Risks and Benefits," presented before The National Options & Futures Society on November 13, 1991; and Trading Analysis of October 13 and 16, 1989, A Report by the Division of Market Regulation (May 1990). While the use of OTC derivatives is germane to many of the issues discussed in this concept release, especially those relating to market fragmentation, these products also raise many issues outside of the scope of the Market 2000 Study. In light of the several studies of OTC derivatives currently underway, the market impact of these products will not be a primary focus of the Market 2000 Study, although the Division will consider the results of those studies in connections with the Market 2000 Study. In addition, commentators are invited to address any specific issues concerning OTC derivatives that are germane to the Market 2000 Study.

[51] See Securities Exchange Act Release No. 23170 (April 23, 1986), 51 FR 16004; In re Kidder, Peabody & Co., 43 S.E.C. 911 (1968).

[52] See Securities Exchange Act Release No. 23170 (April 23, 1986), 51 FR 16004; and SEC, Second Report on Bank Securities Activities: Comparative Regulatory Framework Regarding Brokerage-Type Services 97–98, 98 n.233 (February 3, 1977), *as reprinted in* Senate Comm. on Banking, Housing & Urb. Affs., 95th Cong., 1st Sess., Report on Banks Securities Activities of the SEC 145, 251–52, 252 n.233 (Comm. Print 1977).

[53] But see Securities Exchange Act Release No. 14885 (June 23, 1978), 15 S.E.C. Doc. 138, requesting comments on a neutral order routing switch; Securities Exchange Act Release No. 18738 (May 13, 1982), 47 FR 22376, proposing a rule to require intermarket exposure of customer orders; and Securities Exchange Act Release No. 19372 (December 23, 1982) 47 FR 58287 (Reproposal of an Order Exposure Rule) and the accompanying Technical Appendix. The order routing and order exposure proposals received extensive comment, much of which raised competitive and operational concerns about them. In light of technological advances and market developments since the issuance of the proposals, the Division is interested in whether commentators believe these proposals should be revisited.

investor protection and competition between markets.

2. Payment for Order Flow

Payment for order flow is the practice of market makers or exchange specialists compensating brokerage firms for directing customer orders to them.[54] While payment for order flow has been a common practice among market makers in OTC securities for some time, an increasing volume of retail orders (especially in exchange-listed stocks) is now subject to such arrangements. In addition, although this practice originated with wholesale firms with no direct retail order flow, some integrated firms are also paying for order flow. Moreover, surveys undertaken by the SROs indicate that third market makers and some regional exchange specialists are paying for order flow. Indeed, the acquisition of many regional exchange specialists by integrated firms, with the resulting direction of order flow to the affiliated specialist, has been characterized as a widespread payment system.[55]

The increase in payment for order flow can be traced, in part, to the development by many OTC and third market makers, as well as the regional stock exchanges, of automated execution systems. The systems not only provide customers with quick, efficient and comparatively inexpensive executions at the best displayed quotation, but also have enhanced these firms' and exchange specialists' ability to execute small orders. As a result, OTC and third market makers, as well as regional exchange specialists, can afford to pay for order flow, while broker-dealers receiving such payments cut their transaction costs. As competition among firms providing automatic execution systems has increased, it appears that firms increasingly use payment for order flow as a means of attracting order flow to their automated execution systems.

Commentators are deeply divided on the issue of payment for order flow.[56] Some commentators have argued that firms routing their order flow regularly to a specific market or market maker are providing value that is very different from the value provided in routing a single order and that they should be compensated for that service.[57] Others have argued that the practice interferes with the firm's obligation to provide best execution, and that the benefits to the executing broker never flow back to the customer.[58] Moreover, the practice raises the concern that a broker's decision on how to execute a customer's order is influenced by the payment of compensation by particular markets or market makers. The aggregation of customer orders to fulfill an agreement to route orders based on payment effectively prevents the broker from making a trade-by-trade assessment of execution quality, potentially raising the issue of whether customers are, in fact, receiving best execution. Some believe that the practice should not be viewed as a discrete issue, but should be considered as closely related to other, broader questions relating to pricing of customer orders, competition among markets, and quality of markets.

The Commission held a roundtable on the topic in July 1989, at which participants discussed the extent of the practice, and its effect on best execution, disclosure, pricing efficiency, and quotation spreads. More recently, the Commission responded to a letter from Congress discussing the topic.[59]

Commentators are invited to address the practice of payment for order flow and its impact on the equity market. The Division is interested in commentators' views on the extent to which payment for order flow occurs. In addition, commentators are asked to address the following issues regarding payment for order flow: (1) Whether the customer receives best execution of his or her order; (2) whether the practice is consistent with a broker's fiduciary responsibility to customers; (3) whether the practice provides benefits that outweigh any costs it may impose, and (4) whether a broker receiving payment should be held to a disclosure requirement, assuming that the practice is not prohibited outright. In addition, payment for order flow raises market structure issues regarding whether it: (1) Encourages the routing of customer orders away from auction markets, and, if so, what are the costs and benefits of this result; (2) is consistent with the goal of fair competition set forth in Section 11A of the Act; or (3) reduces market maker quote competition for orders. To the extent commentators raise concerns over the practice of payment for order flow, they are asked to suggest responses they believe would adequately address those concerns.

3. Other

Competition between markets has resulted in the markets themselves putting in place structures that raise best execution concerns. For example, the NYSE has proposed a rule change to allow a "clean" agency cross of 25,000 shares or more to be effected at or within the prevailing NYSE quote.[60] The proposal was made in reaction to the frequency of block trades being executed on the regional markets to avoid having to take out the NYSE limit order book. As another example, the Amex has proposed dropping from 25,000 to 10,000 shares the size of an order that can obtain precedence over orders at the same price.[61] These proposals raise questions about the balance between fair markets and fair competition. The Division is interested in comments on the extent to which SRO rules promote or hinder the fair handling of customer orders and on the proper balance between SRO competitive initiatives and order execution rules.[62]

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[54] It should be noted that there is a debate among the commentators about precisely what types of practices should be deemed to involve payment for order flow. On the one hand, some commentators focus on cash payments for the receipt of order flow. Other commentators argue that other forms of economic incentives to direct order flow to a particular market are, at least, the economic equivalent of payment for order flow. See Inducements for Order Flow, A Report to the Board of Governors, National Association of Securities Dealers, Inc., July 1991 ("Ruder Committee Report").

[55] Ruder Committee Report.

[56] See letter from Richard C. Breeden, Chairman, SEC, to the Honorable John D. Dingell, Chairman, Committee on Energy and Commerce, U.S. House of Representatives, dated July 2, 1992; Coffee, Corporate Securities, New York Law Journal, Jan. 23, 1992, at 5, 7, 29; and Ruder Committee Report.

[57] Ruder Committee Report at 25.

[58] C. Lee, Purchase of Order Flows and Favorable Executions: An Intermarket Comparison (September 15, 1991); M. Blume & M. Goldstein, Differences in Execution Prices Among the NYSE, the Regionals and the NASD (September 1991). See, also, letter from Anson M. Beard, Jr., Managing Director, Morgan Stanley & Co., to Thomas E. Haley, Chairman, Consolidated Tape Association, dated January 11, 1989, recommending that a decimal-based pricing system would remove the wide spreads that make payment for order flow possible.

[59] See letter from Richard C. Breeden, Chairman, SEC, to the Honorable John D. Dingell, Chairman, Committee on Energy and Commerce, U.S. House of Representatives, dated July 2, 1992.

[60] See Securities Exchange Act Release No. 28453 (September 25, 1990), 55 FR 39223 (notice of filing of File No. SR-NYSE-90-39).

[61] See Securities Exchange Act Release No. 30257 (January 16, 1992), 57 FR 2937, (notice of filing of File No. SR-Amex-91-34). Under current Amex rules, an order for 25,000 shares or more would be executed ahead of smaller orders once a clearing trade (a transaction at the same price) has occurred. The Amex proposes to extend this size precedence to orders of 10,000 shares or more.

[62] For example, NYSE rules permit any order to be "sized out" by a larger order regardless of time priority, once a clearing trade has occurred (subject to the constraints of section 11(a) of the Act). If, say, the bids on the specialist book at the best price total 500 shares, and a 100 share trade occurs reducing the bid to 400 shares, then a new bid on the floor of 1,000 shares would have precedence based on size over the 400 share "book" bid. Are such rules consistent with fair and orderly markets?

E. Transparency

1. General

The U.S. equity markets generally have achieved a high level of transparency, *i.e.*, the real time dissemination of trade and quote information. While the Commission has been working with the SROs to increase transparency,[63] such developments as after-hours trading, the growth of proprietary trading systems, and fourth market trading have raised questions of the availability of real-time trade and quote information to all market participants.

The Commission is interested in whether current market transparency is adequate and how to ensure that market participants have access to necessary information. In particular, commentators should explore the areas where transparency could be improved, for example, by: (i) The dissemination of more timely trade information on after-hours trading by both exchanges and off-exchange systems; [64] (ii) examining the integration, at an appropriate cost level, into the consolidated quotation system of quotations or priced orders in the off-exchange systems; [65] and (iii) requiring exchanges to display all market interest, or at a minimum display all limit orders received by a specialist.[66]

2. Overseas Trading.

While transparency may be a strength of the U.S. equity markets, those markets no longer face competition solely from domestic sources. Markets around the world are competing for order flow in world-class U.S. equities, and broker-dealers seek to execute trades in the cheapest market, both in terms of fees and regulations.[67] The Division seeks information on the extent to which order flow may be going offshore for transparency reasons. Moreover, the Division is interested in how foreign trades in U.S. stocks should be reported. The NYSE has proposed to require that these trades be reported to the NYSE.[68] Apart from the NYSE's proposal, how should these transactions be categorized for transparency purposes?

F. Regulatory Oversight.

Some proponents of proprietary trading systems and off-exchange trading have suggested that the SROs are charging fees for regulatory activities that exceed their costs. SROs, in turn, sometimes claim that they, in effect, subsidize proprietary trading systems and off-exchange markets by performing regulatory oversight of the equity market these systems utilize for pricing as well as of their own member organizations.

The Division solicits comment on the manner in which Commission or SRO rules might be revised to avoid any unjustified disparities between the regulatory burdens and costs of registered exchanges, proprietary trading systems, and off-exchange markets. The comments should also address whether there should be a different allocation of regulatory responsibilities among the SROs themselves. In this regard, the commentators should identify any regulatory burdens or costs that they believe are unfairly allocated, and if there is an unfair allocation, the manner in which a reallocation should be made. If any unfair burden should be eliminated, the commentators should identify the manner in which the regulatory interest protected by such regulation should be addressed. Moreover, commentators should identify those rules of the Commission and the SROs that have limited investor protection purposes and contribute to inefficient markets.

The Division also solicits comment on the extent that regulatory responsibilities unfairly prevent markets with self-regulatory duties from competing with other markets. Further, if any such burdens are identified, commentators should address the manner in which it may be necessary to reallocate, reassign, or eliminate those burdens to permit fairer competition between markets.

V. Conclusion

In this concept release the Division has identified those issues which it believes are germane to an evaluation of equity market structure regulation. At a minimum, the following issues will form the core of the Division's analysis and should be addressed by commentators.

1. The central purpose of the equity markets is to raise capital for use by businesses. To what degree do developments affecting traders and competing trading systems enhance or detract from the attractiveness of the U.S. equity market to savers and investors providing capital? How can the national interests of promoting savings and capital investment best be enhanced through organization and operation of the secondary trading markets? What secondary market features or practices encourage or discourage low-cost capital availability?

2. Will the existing equity markets continue to provide a centralized price discovery function? If not, why not, and what effect will this have on the U.S. capital markets? In this regard, are the equity markets becoming stratified, with the easy, profitable trades being diverted from the price discovery markets?

3. What are the costs and benefits of increased market segmentation, and how does it affect the price discovery function, market transparency, market liquidity, or best execution of orders?

4. How can increased market competition be facilitated while maintaining an efficient and liquid system for price discovery? Are there barriers to market competition and access, and if so, are they necessary?

5. How has payment for order flow affected the equity markets? What are its costs and benefits? How should the Commission address the seven specific issues noted in the payment for order flow section of this release?

6. What is the proper and most equitable means to allocate regulatory and self-regulatory costs in the equity markets? How should organized markets, proprietary systems, market professionals and customers be assigned these costs and responsibilities, both among these four groups and within each group?

7. How should the regulatory system treat after-hours trading (*i.e.*, trading when the primary market is closed)? Should the existing regulatory structure be imposed "whole cloth," or should deviations be made? For example, how should trade reporting be handled? What trading practice rules are appropriate?

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[63] See Securities Exchange Act Release No. 30569 (April 10, 1992), 57 FR 13396 (Commission order approving NASD rule change that requires NASD members to report to the NASD transactions in NASDAQ securities, with certain exceptions).

[64] For example, should there be a so-called "run-off" tape for all after-hours transactions in reported securities? A "run-off" tape is a trader's colloquialism for capturing trades on the tape that occur after the close of normal trading. Such a tape could be expanded to capture all after-hours trades in reported securities and disseminate varying degrees of information. The information could simply include the total volume and high, low, and average prices for the after-hours trading of each security. Alternatively, the "run-off" tape could show transaction-specific information for after-hours trades.

[65] The Division would be interested in obtaining cost estimates concerning the integration of such trading into a consolidated system.

[66] See Steiner and Salwen, Stock Specialists Often Keep Best Quotes to Themselves, Wall St. J., May 8, 1992 at C1.

[67] See discussion at notes 28 to 30 *supra*.

[68] See Securities Exchange Act Release No. 30155 (January 6, 1992), 57 FR 1294 (notice of filing of File No. SR-NYSE-91-45).

8. How should the regulatory system treat proprietary trading systems, and, in particular, how should the Commission address the five questions noted in the proprietary trading system section of this release?

9. What is the proper role of the Commission in addressing the above issues, and in ensuring that the U.S. equity markets remain the fairest, most efficient, and most competitive in the world?

In addition to these issues, the Division welcomes comments on the other issues identified in this release as well as suggestions on other issues the study should address, bearing in mind the scope of the study.

The Division also welcomes any empirical work or academic studies on these issues, or any data that might be helpful to an assessment of these issues. The Division is particularly interested in data on the following.

1. The amount of trading of publicly issued equities in the fourth market.

2. The amount of trading in U.S. equities abroad, including trading nominally effected in foreign "over-the-counter" markets. How much of this is in individual stocks and how much in programs?

3. The amount of equity trading that is passive trading (*e.g.*, and S&P 500 indexed account) as opposed to active trading.

4. The amount of equity trading attributable to derivative trading and hedging strategies.

5. The amount of equity trading effected as principal in the third market. How much of this is in individual stocks and how much in programs?

6. What are the regulatory costs for the organized markets, off-exchange trading systems, and market participants competing with organized markets. The Division is particularly interested in the regulatory costs for operating the market, system, or competitive enterprise.

7. What are the transaction costs, including fees, impact costs, and execution prices, of trading in the various organized markets, off-exchange systems, fourth market, and through third market makers (including foreign OTC markets)?

8. How widespread is payment for order flow? What are the amounts being paid, and in what forms?

The Division invites the submission of any other data that commentators feel may be useful. All comments and submissions will be available in the Commission's Public Reference Room under File No. S7–18–92.

Dated: July 14, 1992.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

United States

SECURITIES AND EXCHANGE COMMISSION

Washington, DC 20549

July 11, 1991.

The Honorable Edward J. Markey,
Chairman, Subcommittee on Telecommunications and Finance, Committee on Energy and Commerce, U.S. House of Representatives, Washington, DC 20515

Dear Chairman Markey: Thank you for your letter dated May 16, 1991, concerning the impact of computerized trading systems on the National Market System. In response to your letter, I have enclosed a copy of a memorandum that I asked the Division of Market Regulation to prepare, which addresses in detail the questions you have asked. I believe that the Division's memorandum correctly identifies the issues on which the Commission should focus in this increasingly important area affecting our securities markets.

As Congress understood when it enacted section 11A, markets no longer are, or need be, only physical places. Market forces of supply and demand can be, and to a large extent are, linked electronically, even in the electronic circuits happen to meet on an exchange floor. Whether one welcomes it or not, computerized trading already is an integral part of our markets and of all major foreign markets as well.

In general, the emergence of a larger number and variety of computerized trading systems has to date furthered the National Market System goal of decreasing transaction costs, increasing transparency, and enhancing competition in our markets. Of course, the potential exists for the use of these trading systems to increase and for the nature of these systems to change in a manner that may be currently difficult to foresee. It is for these reasons that I believe that the Commission must review with great care the manner in which we regulate these systems and the incentives created by our regulations.

I appreciate this opportunity to set forth our views on this important topic, and I look forward to working with you and the Subcommittee on developments in this area.

Sincerely,

Richard C. Breeden,

Chairman.

Enclosure

Memorandum

To: Chairman Breeden
From: William H. Heyman, Director, Division of Market Regulation
Re: Response to Letter from Chairman Markey concerning Computerized Trading Systems
Date: July 3, 1991.

I. Background

You have asked the Division of Market Regulation ("Division") to prepare responses to the letter to you from Chairman Markey dated May 16, 1991, concerning computerized trading systems. Before answering the seven specific questions, we would like to set forth some basic assumptions and concepts. In this way we hope to shorten the answers by referring back to these common assumptions and concepts, rather than redefining them in each answer.

A. The National Market System

The "national market system" is a term that is not specifically defined in Section 11A of the Securities Exchange Act of 1934 ("Act") because Congress believed that it was best to give the Commission "maximum flexibility in working out specific details." [1] The Congress decided that it was "essential that the Commission be granted broad, discretionary powers to oversee the development of a national market system and to implement its specific components in accordance with the findings and to carry out the objectives set forth in the bill." [2]

As these statements make clear, the findings and objectives set forth in section 11A are the critical guides to be followed by the Commission in determining how to exercise its authority to "facilitate the establishment of a national market system." [3] The findings and objectives, which are contained in section 11A(a)(1), include the following:

(1) New data processing and communications techniques create the opportunity for more efficient and effective market operations;

(2) It is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure—

(i) Economically efficient execution of securities transactions;

(ii) Fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets;

(iii) The availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities;

(iv) The practicability of brokers executing investors' orders in the best market; and

(v) An opportunity, consistent with the provisions of clauses (i) and (iv) of this subparagraph, for investors' orders to be executed without the participation of a dealer; and

(3) The linking of all markets for qualified securities through communication and data processing facilities will foster efficiency, enhance competition, increase the information available to brokers, dealers, and investors, facilitate the offsetting of investors' orders, and contribute to best execution of such orders.

Congress stated that there were two paramount objectives: "the maintenance of stable and orderly markets with maximum

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[1] Senate Comm. on Banking, Housing and Urban Affairs, Report to Accompany S. 249, S. Rep. No. 94–75, 94th Cong., 1st Sess. 7, *reprinted in* 1975 U.S. Code Cong. & Ad. News 179, 185 ("Senate Report").

[2] *Ibid.*

[3] Section 11A(a)(2).

capacity for absorbing trading imbalances without undue price movements," and the "centralization of all buying and selling interest so that each investor will have the opportunity for the best execution of his order, regardless of where in the system it originates." [4]

Congress also stated that the goal of the legislation was not to "eliminate distinctions between exchange markets and over-the-counter markets * * *," or "to force all markets for all securities into a single mold." [5] At the same time, however, Congress also indicated that, with respect to securities suitable for auction trading, "every effort should be made to design the national market system in such a way that public investors in those securities receive the benefits and protections associated with auction type trading." [6] In this connection, the Congress stated that a goal of the national market system is "the elimination of fragmented markets for securities suitable for auction trading." Congress thus indicated that, in addition to trade and quotation reporting, a "set of trading rules and procedures" may be needed to "tie the individual market centers together." [7]

Finally, Congress expressed its intent that the Commission's role in fulfilling its mandate under section 11A was not to be an "economic czar" [8]; rather, Congress intended that the "initiative for the development of the facilities of a national market system must come from private interests, and will depend upon the vigor of competition within the securities industry as broadly defined." [9] In this context, Congress stated that the SEC's "basic role" would be to "remove burdens on competition which would unjustifiably hinder the market's natural economic evolution and to assure that there is a fair field of competition consistent with investor protection." [10]

B. What is a Securities "Market"

Although also not defined, the concept of a securities market is critical to the concept of a national market system, for, as described above, the core goals relate to competition among and the linking of "markets." While not specifically defined, it seems clear that Congress used the term "markets" to include exchanges and the over-the-counter market as a whole, but not individual brokers and dealers. For example, in section 11A(a)(C)(ii), Congress speaks separately of "brokers" and "dealers" on the one hand and of "exchange markets" and "markets other than exchange markets" on the other hand.

The distinction between "exchanges" and "brokers" and "dealers" also is central to the Commission's decisions regarding the proper registration category of proprietary trading systems. Thus, as you know, the Commission staff has determined that several proprietary trading systems do not meet the definition of the term "exchange" in section 3(a)(1) of the Securities Exchange Act of 1934, but rather meet the definition of the terms "broker" or "dealer" in sections 3(a)(4) and (5).[11] Because the statutory definition of the term "exchange" is not unambiguous, the Commission interpreted this term in its order approving the registration of Delta Government Options Corporation ("Delta") as a clearing agency under section 17A of the Act to mean:

Trading markets that, like the exchange markets of the mid-1930's and of today, are designed, whether through trading rules, operational procedures or business incentives, to centralize trading and provide buy and sell quotations on a regular or continuous basis so that purchasers and sellers have a reasonable expectation that they can regularly execute their orders at those quotations.[12]

As you also know, the Seventh Circuit Court of Appeals recently has upheld the Commission's approach to the interpretation of the term "exchange." [13]

C. Transparency Principles

One of the central goals of Section 11A is to assure the transparency of the markets for securities trading in the national market system.[14] The industry and the Commission have devoted substantial attention to this area, and a result is real-time trade and quotation reporting for the major exchange and over-the-counter securities. It is important to keep in mind that these transparency requirements for listed securities apply equally to over-the-counter trades. Thus, whenever a broker or dealer effects a trade in a listed security during the hours of operation of the trade reporting system (currently 9:30 to 4:30), the broker is required to report the price and size of the trade within 90 seconds so that the trade report can be disseminated over the Consolidated Tape Association Trade Reporting System.

Among other things, this means that trades effected by or through a proprietary trading system registered as a broker-dealer [and the sponsors of all systems trading listed or National Association of Securities Dealers Automated Quotation System ("NASDAQ")/ National Market System ("NMS") stocks are so registered] during the hours of operation of the trade reporting system are as transparent as trades effected on exchanges. It also means that all trades effected after the hours of operation of the consolidated reporting system, whether effected on or off an exchange, are not subject to the complete transparency rules. Again, there is no discrepancy here between transparency requirements for exchanges and for brokers and dealers, including proprietary trading systems, trading listed securities.

The New York Stock Exchange ("NYSE") after-hours sessions differ from the normal transparency principles for exchange trades in that trades in Crossing Session I

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[4] Senate Report, *supra* note 1, at 185.

[5] *Ibid.*

[6] Senate Report, *supra* note 1, at 195.

[7] *Ibid.*

[8] Senate Report, *supra* note 1, at 190.

[9] *Ibid.*

[10] *Ibid.*

[11] There are 20 systems that have received staff no-action positions with regard to non-registration as a national securities exchange under Section 6 of the Act:

1. Capitalink Bond Auctions, Inc. See letter from Brandon Becker, Associate Director, Division to Peter F. Olberg, Battle Fowler, dated December 11, 1989. Active.

2. RMJ Securities—Delta Government Options. See letter from Richard G. Ketchum, Director, Division to Robert A. McTamaney, Carter, Ledyard & Milburn, dated January 12, 1989. Active.

3. ECON Investment Software. See letter from Kathryn V. Natale, Assistant Director, Division, To Christopher R. Petruzzi, ECON Investment Software, dated October 11, 1988. Out of business.

4. POSIT. See letter from Brandon Becker to Lloyd Feller, Morgan Lewis & Bockius, dated July 28, 1987. Active.

5. Instinet. See letter from Richard G. Ketchum to Daniel T. Brooks, Cadwalader, Wickersham and Taft, dated August 8, 1986. Active.

6. Adler & Co. See letter from Richard T. Chase, Associate Director, Division, to James M. Anderson, Taft Stettinius & Hollister, dated August 7, 1985. Out of business.

7. NAPEX. See letters from Michael J. Simon, Assistant Director, to D. Roger Glenn, Schifino & Fleischer, dated August 2, 1985 and July 14, 1986. Active.

8. Security Pacific. See letters from Richard T. Chase and Richard Ketchum to Eric D. Roiter, Debevoise & Plimpton, dated July 19, 1985 and August 8, 1986. Out of business.

9. Troster Singer. See letter from Michael J. Simon to Carl J. Hewitt, Assistant General Counsel, Troster Singer Corporation, dated May 23, 1985 and September 3, 1985. Out of business.

10. Exchange Services. See letters from Michael J. Simon to Patteson Branch, President, Exchange Services, Inc., dated May 22, 1985 and September 5, 1985. Out of business.

11. Transaction Services. See letters from Michael J. Simon to Michael J. Tario, Co-Chief Executive Officer, Transaction Services, Inc., dated May 15, 1985 and September 5, 1985. Out of business.

12. B&K Securities Inc. See letters from Michael J. Simon to Bruce C. Klein, Secretary-Treasurer, B&K Securities, Inc., dated March 18, 1985 and September 5, 1985. Out of business.

13. Petroleum Information Corporation. See letter from John M. Ramsay, Attorney, to Alan P. Baden, Vinson & Elkins, dated November 12, 1989. Active.

14. NYSAC. See letter from Brandon Becker to Michael J. Simon, Milbank, Tweed, Hadley & McCloy, dated June 15, 1990. Active.

15. Investex Investment Exchange Inc. See letter from John M. Ramsay to Howard Wynn, Gusrae, Kaplan & Bruno, dated April 9, 1990. Active.

16. Real Estate Financing Partnership. See letter from Kathryn V. Natale to Joseph H. Huston, Jr., Stevens & Lee, dated May 1, 1990. Active.

17. Troy Capital Services, Inc. See letter from Kathryn V. Natale to Edward M. Olson, McDonnell Douglas Capital Corporation, dated May 1, 1990. Active.

18. Farmland Industries Inc. See letter from C. Dirk Peterson, to Paul A. Belvin, Stinson Mag & Fizzell, dated January 23, 1991. Active.

19. Wunsch Auction Systems, Inc. See letter from Richard G. Ketchum to Daniel T. Brooks, Cadwalader, Wickersham and Taft, dated February 28, 1991. (Although deemed an exchange, Wunsch Auction Systems received a no-action letter regarding non-registration as an exchange under Section 6 of the Act.) Active.

Portfolio Trading Services, Inc. See letter from William H. Heyman, Deputy Director, to Richard S. Soroko, Lippenberger, Thompson & Welch, dated May 16, 1991. Active.

[12] Securities Exchange Act Release No. 27611 (January 12, 1990), 55 FR 1890 ("Delta Order").

[13] *Bd. of Trade of the City of Chicago* v. *Securities and Exch. Comm'n*, 923 F.2d 1270 (7th Cir. 1991), rehearing en banc denied, No. 90-1246 (7th Cir. April 2, 1991).

[14] See Section 11A(a)(C)(iii).

(individual stock trades) are not individually reported on the tape, but rather total volume for each stock in that session is reported. In addition, for Crossing Session II (the aggregate securities trading session), only total dollar and share volume for all aggregates traded during the session are reported. A condition of approval of the NYSE proposal is that the NYSE report to the Commission within six months on the operation of these new (for U.S. exchanges) transparency principles.

Transparency principles for overseas markets in U.S. equities are not as rigorous as those applied in the United States markets. For example, about 3 million shares of U.S. equities are traded in the London over-the-counter market each day as a part of program trades, without any trade reporting at all.[15] Even in some organized overseas markets for U.S. equities,[16] transparency is much less than it is for the same securities in the U.S.[17]

D. What is the "Fourth Market"?

From the SEC's perspective, the fourth market is a market where institutions trade directly with one another without the participation of a broker-dealer. While some market participants and some recent surveys categorize Instinet and Jefferies trades as fourth market trades, from the SEC's perspective these trades are not fourth market trades because Instinet and Jefferies are registered broker-dealers.

The distinction is important because, among other reasons, trades effected through Instinet and Jefferies, unlike true fourth market trades, are subject to transparency rules and to oversight by the National Association of Securities Dealers ("NASD"). It is our understanding, based upon preliminary conversations with several large institutions, that true fourth market trading is still quite limited and that most of what is sometimes reported as fourth market volume is in fact Instinet and Jefferies volume.

E. Price Discovery versus Passive Trading

Another concept that is important to understand in any discussion of proprietary trading systems is the distinction between trades that discover prices and trades that are passively, or derivatively, priced. Price discovery involves the determination of the price of a security through the interaction of supply and demand. This interaction can occur either directly, as in the case of the Wunsch Auction System; through agents, as in auction markets; or indirectly through the trading of dealers, as in the NASDAQ market.

In contrast, passive, or derivative, trading takes prices discovered in other markets. For example, the crossing systems operated by Instinet and Jefferies and the after-hours overseas markets for trading programs of U.S. equities often use prices discovered in the primary markets for the securities, principally the NYSE. Other examples of passively or derivatively priced systems as defined here include the small order execution systems of the regional exchanges; the automated execution system for listed stocks operated by Bernard Madoff & Co ("Madoff"); and the after-hours single stock trading system recently introduced by the NYSE.

Passive pricing systems have developed for a variety of reasons. Certain institutional investors pursuing indexing strategies are primarily interested in matching the price performance of specific indices. Seeking the opportunity to obtain better prices by participating in the price discovery mechanisms not only is less important to such institutions but may even be counterproductive due to the large costs (including market impact costs) of effecting large trades in the price discovery systems.

On the other hand, investors seeking to effect smaller trades seem increasingly to believe that the opportunities for obtaining price improvement [18] provided by price discovery markets to smaller trades are relatively slight and outweighed by the opportunity for assured and speedy executions at displayed quotations, or in some cases now at current last sale prices, provided by the derivatively priced small order execution systems operated by the regional exchanges. It should be noted that the primary stock markets such as the NYSE and the American Stock Exchange ("Amex") do not operate such systems in large part because of the opportunities they provide for orders to obtain price improvement by being executed in between displayed spreads. About 35% of all Amex and NYSE orders in stocks with spreads of more than ⅛ in fact obtain such price improvement. In an attempt to provide similar price improvement opportunities, some regionals recently have modified their small order systems to give on a limited basis prices based upon primary market prices rather than quotations. Even with these modifications, these systems are passively priced in that the NYSE and the Amex continue to rely upon prices discovered elsewhere.

Finally, a significant portion of block trades are in effect passively priced. Many such trades are negotiated off the floor based upon the current prices disseminated from the floor, with a block premium added or subtracted, and then executed on the floor under the exchanges' block trading rules designed to protect resting pubic limit orders. About 50% of all NYSE trades now are block trades,[19] and a substantial proportion of those block trades are negotiated off-floor. As a result of the increasing reliance of both small and large traders upon passive pricing mechanisms, the price discovery mechanisms today reflect largely the interaction of medium sized supply and demand.

F. Volume in Off-Exchange Systems

While it is true that interest in off-exchange trading systems has increased in recent years, it is also true that the volume traded in these systems, and especially volume not subject to transparency requirements, has remained relatively slight. For example, Instinet's overall average daily volume in the first quarter of 1991 was almost 8 million shares, of which 7.1 million shares were effected in trades subject to real-time trade reporting. Similarly, average daily volume in Jefferies POSIT system in the first quarter of 1991 was over 3 million shares, over 99% of which was effected in trades subject to real-time trade reporting requirements. Maddoff's average daily volume in listed securities in the first quarter of 1991 about 9 million shares,[20] all of which was effected in trades subject to real-time reporting requirements.

The NYSE averaged about 194 million shares per pay in the first quarter of 1991, and the five regional exchanges [21] together averaged about 28 million shares daily. Thus, the combined average daily share volume of Instinet, Jefferies (POSIT) and Madoff was about 20 million shares, or 10% of NYSE volume and 9% of combined NYSE and regional volume in listed shares. In transparency terms, combined Instinet, Jefferies (POSIT) and Madoff non-real-time reported share volume was about one million shares, or less than one half of one per cent of combined daily NYSE and regional volume.[22]

By way of comparison, it is estimated that about 20 million shares a day are effected in overseas markets for U.S. securities.[23] Thus, an equal amount of trading of listed U.S. equities has escaped to foreign markets as has migrated from U.S. exchanges to U.S. off-exchange markets.

II. Answers to Specific Questions

1. *What is the Commission's analysis of the implications of the emergence of*

[15] In its order approving the application of Wunsch Auction Systems, Inc. ("WASI") for exemption from exchange registration, the Commission indicated that trades negotiated by U.S. firms in the U.S. at closing U.S. prices will be deemed U.S. trades for trade reporting and other regulatory purposes even if deemed by the NYSE to be effected overseas for purposes of NYSE Rule 390. See Securities Exchange Act Release No. 28899 (February 20, 1991), 56 FR 8377, 8381. This may bring some increased, U.S.-style transparency to these trades.

[16] Unlike the U.S.'s NASDAQ market, the over-the-counter market in the U.K. is neither organized nor transparent.

[17] For example, the U.K.'s market for foreign securities, Stock Exchange Automated Quotation System ("SEAQ") International, does not have public trade reporting.

[18] Price improvement in this context means a price better, from the investor's point of view, then the bid (offer in the case of a buy order) being disseminated at the time the order is entered.

[19] In this context, a block trade is a trade of 10,000 shares or greater.

[20] This assumes that a substantial portion of the 12,975,510 share listed volume attributed in the Consolidated Trade Association's volume to the National Association of Securities Dealers, Inc. ("NASD") is attributable to Madoff; we have in effect subtracted three million shares for Jefferies (Instinet is reported separately), one million shares for other potential sources of third market volume, and deemed the rest Madoff volume.

[21] The Boston ("BSE"), Cincinnati ("CSE"), Midwest ("MSE"), Pacific ("PSE"), and Philadelphia ("Phlx") Stock Exchanges.

[22] WASI's average share volume per auction, for the first two months of operation, was 27,936 shares.

[23] While there are no precise tabulations of overseas trade value in U.S. equities, we believe that current industry estimates of about 20 million shares are generally accurate.

computerized trading systems for the National Market System, and the extent to which such systems are consistent or inconsistent with the objective of linking all securities markets through communication and data processing facilities?

As recognized by section 11A itself,[24] computerized trading generally has positive implications for the National Market System and is consistent with the objective of linking all securities markets through communication and data processing facilities. At the same time, the potential growth of new systems and the continuing development of communications technologies suggests the desirability of a reexamination of the need for and potential to expand upon current National Market System structures.

Computerized trading systems, whether operated by securities markets or by broker-dealers, generally further the development of the National Market System. These systems tend to reduce transaction costs, thereby furthering the goal of economically efficient executions [(section 11A(a)(1)(C)(i)]; promote competition [(section 11A(a)(1)(C)(ii)]; improve the transparency of markets [(section 11A(a)(1)(C)(iii)]; increase the opportunities for best execution by improving overall transparency [(section 11A(a)(1)(C)(iv)]; and, especially in the case of systems like Instinet, Wunsch, Jefferies, and the NYSE after-hours system, enlarge the opportunities for orders to be executed without the participation of a dealer [(section 11A(A)(1)(C)(v)].

Moreover, the aggregate use of systems not operated by securities markets continues to be relatively small. For example, the overwhelming majority of U.S. trading volume [25] in listed stocks is still effected on exchanges, and fragmentation of volume due to off-exchange trading is still very small. With the relatively low volumes effected through these systems, claims that competition between exchanges and systems not registered as exchanges is not "fair" seem relatively attenuated. The goal of fair competition does not suggest that brokers and dealers like Instinet and Jefferies should be registered as exchanges. In addition, transparency concerns are slight; the U.S. volume escaping real-time trade reporting remains very low as a percentage of all trading. In this connection, it is worth noting that we are unaware of documented complaints or evidence of any actual or measurable harm to investors that has resulted from the emergence of these systems.

For similar reasons, we believe that computerized trading systems, whether operated by securities markets or by broker-dealers, are generally consistent with the objective of linking all securities markets through communication and data processing facilities. Computerization of trading generally lends itself to greater transparency, which is a principal means of market linkage and of assuring the opportunity of best execution. Computerization also facilitates the direct linkage of trading systems.

As described above, the Commission has determined that several computerized trading systems are brokers and dealers rather than "exchanges." To some extent, concerns with the emergence of these computerized trading systems reflect disagreement with these Commission decisions because the classification effectively excludes these systems from the National Market Systems goals of linking "markets." We believe that Commission doctrine in this area, as reflected in the Delta Options order upheld by the 7th Circuit, is correct. We also believe that section 11A(a)(1)(D) correctly refers to the linkage of "markets," not "brokers" or "dealers."

We do not, however, dismiss the possibility that use of off-exchange systems will increase. To a large extent, the Commission's regulatory approach to computerized off-exchange systems reflects the experimental nature, specialized purpose [*e.g.*, institutional crosses at fixed prices (Instinet and POSIT); once-a-day call auctions (WASI); or small order automated executions (Madoff)], and limited use of these systems. Even though volume in these systems is still small relative to exchange volumes, there is clearly increased investor interest in trading mechanisms that offer an alternative to traditional exchanges. For obvious reasons, institutions are seeking to reduce their transaction costs, and they believe off-exchange systems are less expensive from this perspective for some of their trades, especially passively priced trades. Similarly, small investors may perceive the costs of off-exchange trading to be less for certain of their small orders.

Moreover, with the increasing acceptance of computerized trading by all industry participants, including exchanges,[26] and with the continuing development of communications technology, technology-based solutions to various National Market System goals (such as market linkages, trading without the intervention of a dealer, and increased competition) may be even more affordable and more feasible than they were at the time section 11A was enacted.

Because of the potential increase in use of off-exchange systems and the expanded technological possibilities for National Market System initiatives, we believe that the time is ripe for a thorough examination of the National Market System implications of computerized trading systems. We believe such an examination should be a balanced and thorough one that considers potential changes not only to the Commission's current approach to off-exchange systems but also to the Commission's current approach to primary and regional exchanges, exempt exchanges, and market structure as a whole. This examination would have as its ultimate goal the proactive crafting of an overall regulatory approach that preserves the positive contributions alternative systems have to offer, such as competition, innovation, and reduced costs, and also provides investors and market participants with the most efficient and fairest overall market structure achievable with currently available technologies.

We believe that the Commission could conduct this examination in conjunction with and as a part of its consideration of proposed rule 15c2–10 (see answer 3, below). Consistent with the intent of section 11A, the Commission's central role would be to focus discussion of the issues, facilitate private sector initiatives to implement changes identified as desirable, and where necessary to eliminate competitive barriers to the implementation of such changes.

Issues and options that could be examined include:

(1) transparency improvements, by means such as the dissemination of more timely trade information regarding after-hours trading by both exchange-operated systems and proprietary trading systems [27] and the integration into the consolidated quotation system of quotations (priced orders) in proprietary trading systems;

(2) increasing best execution opportunities by more directly linking trading systems for listed stocks by, *inter alia*, improvements to the Intermarket Trading System ("ITS"), expansion of ITS to include non-19c-3 stocks,[28] or establishment of a centralized limit order book for listed stocks;[29]

(3) the costs and benefits of different mechanisms of addressing market fragmentation and specifically of integrating different trading mechanisms for the same stocks (e.g., call auctions or passively priced crossing networks with continuous price discovery mechanisms);[30]

(4) improved mechanisms for regulation and surveillance of proprietary trading systems, such as proposed rule 15c2–10;[31]

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[24] Section 11A(a)(1)(B) states that "new data processing and communications techniques create the opportunity for more efficient and effective market operations."

[25] As noted above, an increasing volume of trading in U.S. equities is being effected abroad. To some extent this may be due to the progress made in the U.S. in implementing the transparency goals of section 11A; foreign markets for U.S. equities tend to be much less transparent than U.S. markets. See above under Transparency Principles. To some extent, however, foreign trading in U.S. equities may be occurring due to the inability of U.S. firms that are members of the NYSE to effect trades in the U.S. over-the-counter market after-hours due to NYSE Rule 390.

[26] Every exchange relies greatly upon automation, and, with the implementation of the NYSE's after-hours session, every exchange now uses some sort of computerized execution.

[27] As described above in the discussion of transparency principles, there are at least two sets of domestic after-hours transparency issues: (1) The lack of transparency for after-hours trades effected in proprietary trading systems; and (2) the reduced transparency of the NYSE after-hours trading session. The Commission intends to raise its concerns with the lack of transparency of overseas markets for U.S. equities in the appropriate international fora.

[28] Rule 19c-3 under the Securities Exchange Act of 1934 eliminates off-board trading restrictions with respect to equity securities listed after April 26, 1979.

[29] A centralized limit order book is an electronic facility for collecting, storing, and executing all limit orders in particular stocks.

[30] This issue is discussed separately below in the response to Question 2.

[31] Proposed Rule 15c2-10 is discussed further in response to Question 3.

(5) the need to rationalize disparities in regulatory burdens and costs between systems regulated under Sections 6 or 15A under the Act and systems not regulated under these sections;

(6) changes to Commission regulations, and specifically means to maintain transparency and ensure adequate surveillance, if non-intermediated, fourth market, trading increases.[32]

(7) increased exemptive authority for specialized exchanges or for foreign exchanges; [33] and

(8) the effects of any expansion of National Market System initiatives on the global competitiveness of U.S. securities markets.

2. *Concerns have been expressed that the proliferation of off-market trading systems, including Instinet's Crossing Network, Jefferies POSIT system, and the Wunsch Auction System may result in a "Balkanization" of our nation's securities markets that would be inconsistent with the National Market System concept of an integrated nation-wide system of competitively traded securities. Concerns have also been raised that as a result, the goal of maintaining an efficient price-setting mechanism for securities will be undermined. Please provide the Subcommittee with an analysis and evaluation of these concerns. In your response, please indicate whether the Commission believes that electronic trading systems designed to facilitate large institutional trading markets may pose the potential for balkanizing our nations' securities markets into a two-tiered system—one for large institutional traders and another for individual investors.*

As discussed above, market fragmentation issues would be included in the Commission's examination of market structure issues. While we cannot predict the outcome of this part of the reexamination, we can offer the following preliminary observations.

With regard to "balkanization" generally, the fact that trading of listed securities in all systems, whether operated as exchanges or operated as broker-dealers, is equally subject to real-time trade reporting, coupled with the ability of arbitrage to keep prices competitive, greatly limits the extent to which markets for these securities are or ever can be "balkanized" or unlinked in an economic sense. Indeed, the competitive trading of securities in transparent systems seems to further National Market System goals.

Moreover, experience in both the stock and options markets suggests that a certain minimum, critical mass of trading tends naturally, over time, to gravitate to a primary market. The fact that competitive trading among the regional and primary exchanges and among the exchanges and off-exchange systems has in fact occurred in the U.S. with *de minimis* balkanization is concrete evidence of this tendency.[34] The overwhelming preponderance of price discovery trades in listed equities still occurs on the NYSE, the Amex, and the regional exchanges linked to the NYSE and the Amex by the ITS.[35] The limited experience with multiple trading of standardized options also supports this conclusion.[36]

In addition, it is very important to keep in mind that much of the trading being effected off-exchange is passively priced or derivative trading. The effect of the withdrawal of these trades from the price discovery mechanism is not clear. It can be argued that reintroducing the smaller trades effected in derivatively priced automated execution systems would not in any meaningful way assist in price discovery, and that reintroducing the larger institutional trades would only confound efficient price discovery by creating additional volatility. In effect, this argument runs, the larger institutional trades being effected in passively priced systems do not reflect true shifts in supply and demand based on the underlying fundamentals of the issuers.

The contrary argument is that the withdrawal of the "easier" so-called "informationless" (because not related to company fundamentals) trades from the price discovery markets will cause the liquidity providers in those markets (generally specialists, but also people entering limit orders on these markets) to widen their spreads to compensate for the loss of the ability to cover some of their risk of providing liquidity by making small profits on less risky trades.[37] This in turn could increase the transaction costs of the passive traders because they are passively trading on the prices discovered on the price discovery markets. In effect, this argument suggests that the market overall is better off if liquidity providers in the price setting markets can charge the less risky (from the liquidity providers' point of view) trades more than is theoretically justified (from an order-by-order perspective) in order to subsidize the risk they assume on the riskier trades.

Restated, the first argument suggests that orders seeking price discovery should bear the costs of price discovery, even if the consequence is that, on average and over time, those costs may be more than if all orders, including ones not interested in participating in price discovery, were required to be executed in a central mechanism. The second argument in effect suggests that, on average and over time, prices generally are more accurate, or investors generally are better off, when all orders are required to meet in some sense, even if on an order-by-order basis pricing may be somewhat less efficient. In our view, this is the principal issue of the entire debate over market fragmentation.

A different but related pricing efficiency argument arises in the context of the WASI. WASI believes that certain investors employ trading strategies that do not require the immediate execution services provided by the continuous markets. In this view, when these "patient" traders use the continuous markets they are paying a price for immediacy they don't need and, thus, are subsidizing the transaction costs of "impatient" traders. By trading only with other patient traders, their transaction costs should more accurately reflect the costs of patient trading strategies. While the withdrawal of these patient trades may raise the transaction costs of impatient traders using the continuous markets, this is only fair because those still trading in the continuous markets trade there because they desire immediacy and should pay its costs without subsidization by patient traders.[38]

The counter argument is that all trades seeking price discovery should have a chance to interact because this results in the most efficient overall pricing. In this view, any subsidization of impatient traders by patient traders is an unavoidable cost of achieving superior overall pricing efficiency. As with the arguments relating to the price discovery effects of separating passive from price discovery trades, the statute evidences no clear preference for either argument as a matter of pure theory.

While systems like Instinet's Crossing Network or POSIT may pose the potential for completely segregating passive traders from traders seeking price discovery, or, in the case of WASI, patient traders from impatient traders, we do not believe that these systems necessarily bode the separation of institutional traders from individual traders. It must be kept in mind that currently there is no system available for direct trading by individuals. When individuals use exchange markets, they gain access to them through the broker-dealer members of those markets. None of the off-market systems prohibits a broker-dealer from using the system to effect trades for customers. Moreover, none of these systems, including POSIT, has a business interest in preventing individuals *per se* from directly accessing their systems; direct access to these systems is limited only by credit considerations. In sum, while particular systems may offer trading mechanisms more

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[32] As described above, trades between institutions that do not involve a broker-dealer are not transparent. They also are not reported to a self-regulatory organization ("SRO") for surveillance purposes.

[33] See letter from Richard C. Breeden, Chairman, Securities and Exchange Commission, to John M. Dingell, Chairman, House Committee on Energy and Commerce, dated April 5, 1990. This option is discussed further in response to Question 3.

[34] As has been pointed out, these markets impose on themselves a certain amount of fragmentation. For example, in continuous markets, trading is fragmented temporally in the sense that the market does not wait to collect all supply and demand information before executing each trade. In addition, exchange markets developed spatial fragmentation for block trades through their upstairs block trade negotiation procedures. *See* "Auction Countdown," Wunsch Auction Systems, Inc., April 8, 1991; and Submission of the Staff of the Ontario Securities Commission in the matter of Instinet's Application for Admission to Membership in the Toronto Stock Exchange, Appendix A.

[35] See above p. 10.

[36] See Securities Exchange Act Release No. 26870 (May 26, 1989), 54 FR 23963 (approving Rule 19c-5).

[37] This effect, and variations thereof, are sometimes referred to as the "cherry-picking" or "cream skimming" effects. *See* letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Jonathan G. Katz, Secretary, SEC, January 7, 1991 (commenting on WASI application for exemption), File No. 10–100.

[38] This assumes that there are no barriers to participation in either the continuous or the WASI market, an issue discussed separately below in response to the question concerning two-tiered, institutional and individual investor markets. *See* response to Question 5.

desirable to institutions than to individuals, e.g. passive pricing may generally be more favored by institutions than by individuals, and while institutions may generally be better able than individuals to pass the credit checks these systems justifiably require for direct access, these systems do not seek to exclude individual participation *per se*, either directly or (with the exception of Jefferies) via a broker-dealer.

3. *Please explain why the Commission has chosen to deal with proprietary trading systems such as the Wunsch system through the issuance of "no action" letters and low volume exemptions instead of developing comprehensive general regulations or proposing new legislation which would be applicable to the operation of all such systems.*

The Commission staff (and, in the case of Delta, the Commission) grants systems no-action letters where it is appropriate to do under the Delta Order analysis. At the same time, recognizing the problems inherent in the no-action process, including lack of publicity and opportunity for comment on the system initially and as the system changes, lack of an affirmative obligation to register, and lack of obligations to monitor trading in the system, the Commission proposed rule 15c2–10 in 1989. Rule 15c2–10 would, if adopted, put in place a comprehensive general regulation for proprietary trading systems.

The Commission has not actively pursued this approach since 1989 because it has been involved in litigation with the Chicago Board of Trade ("CBT") and the Chicago Mercantile Exchange over the definition of the term "exchange."[39] A decision in that case reversing the Commission's approach in the Delta Order would have required reconsideration of Proposed Rule 15c2–10, as it is premised upon an analysis of the definition of the term "exchange" similar to that set forth in the Delta Order. Now that this litigation has been resolved largely in the Commission's favor, we intend to reactivate consideration of this approach.

The Commission granted the low volume exemption to WASI for the reasons set forth in the attached order approving WASI's application for exemption. In summary, the Commission concluded that WASI satisfied the section 5 standard for the grant of an exemption from exchange registration, *i.e.*, that the exchange have such low volume that registration as a national securities exchange under section 6 of the Act would be impracticable and not necessary or appropriate in the interests of investors. The conditions attached to the grant of the exemption establish a comprehensive regulatory scheme appropriate to a low volume exchange, and these conditions can be changed as the Commission deems necessary and appropriate. The Division does not believe comprehensive general regulations for low volume exchanges are necessary at this time in view of the fact that no other exchanges are seeking low volume exemptions.

The Division also does not believe that an approach like that proposed in Rule 15c2–10 is possible for low volume exchanges. If a system satisfies the definition of the term "exchange," it either must register under Section 6 or obtain a low volume exemption. You have suggested that the exemptive authority in Section 5 is too restrictive and have offered to work with the Congress in crafting a more flexible exemptive provision similar to the exemptive authority the Commission possesses with respect to clearing agencies under Section 17A of the Act.[40] Among other things, this would permit the Commission to develop a comprehensive approach for low volume or other specialized exchanges similar to the approach being developed for broker-dealer systems under proposed Rule 15c2–10.

4. *What is the Commission's analysis of the proposed NYSE off-hours trading system for the NMS? Is the Commission at all concerned that elements of the proposed system will result in a migration of order flow from the regional exchanges to the primary market, with resulting negative implications for the viability of exchanges other than the primary markets (e.g., through increased costs and risks)?*

The Commission believes that the NYSE Off-Hours Trading ("OHT") facility, which was approved for a two year temporary period on May 20, 1991, is consistent with Section 11A of the Act and the principles underlying the National Market System ("NMS"). While it is true that Section 11A contemplates an integrated system for trading securities, this Section also envisions competition among markets, and the Commission does not believe it requires that a new trading system developed by one market immediately must contain provisions to facilitate trading by its competitors. In connection with the NYSE's OHT system, no other United States securities exchange or the NASD's NASDAQ system currently offers a system that is the same as, or substantially similar to, the NYSE OHT facility.

On June 13, 1991, the Commission granted accelerated approval for a temporary two-year period to virtually identical proposals from four regional stock exchanges—the BSE, MSE, Phlx, and PSE—responding to the NYSE's OHT facility. These regional stock exchange proposals did not create separate after-hours trading sessions, but instead were designed to permit the exchanges to require their specialists to provide customers with primary market protection for limit orders in NYSE-listed stocks entered on their books and designated as executable after the close of the regular 9:30 to 4 p.m. trading session ("GTX" orders) based on volume that prints in the NYSE's Crossing Session I. Under the regional exchange proposals, if an issue has traded at the limit price during NYSE's Crossing Session I, the regional specialist must fill designated orders based on volume that prints on the NYSE at 5 p.m., unless a specialist can demonstrate that a particular order would not have been executed if it had been transmitted to the NYSE (*i.e.*, if, upon receipt of a customer's GTX order, the specialist sent a duplicate order to the NYSE and that duplicate order was not executed in NYSE's Crossing Session I). The PSE also will allow GTX orders to be executed in its 4 to 4:30 p.m. (ET) auction market. The proposals by the four regional exchanges were all approved by the Commission on an accelerated basis on June 13, the first day of the NYSE's Crossing Sessions in order to allow the exchanges to compete with NYSE's Crossing Session I. In our view, these proposals achieved the goal of stemming loss of order flow by the regional stock exchanges to the NYSE during trading hours, which in our view was the greatest threat posed by the NYSE's OHT facility.

During the first few days that the NYSE OHT sessions and the new rules by the regional exchanges providing primary market protection have been in effect, the NYSE OHT sessions have experienced relatively small volume. For example, during the first five days that the sessions were operational, the daily volume averaged 432,660 shares in Crossing Session I and 1,416,200 shares in Crossing Session II, as compared with 1991 NYSE average daily volume of 186 million shares during the 9:30 a.m. to 4 p.m. trading session. Concomitantly, the regional exchanges also have experienced low volume in their price protection sessions. In particular, during the same five days, daily volume on the BSE, MSE, PH1x, and PSE averaged 280, 800, 0, and 460 shares, respectively.

The PSE and the Phlx also have submitted additional proposals that have not yet been approved and are currently being reviewed by Division staff. The PSE has proposed to extend its auction market trading session by 20 minutes and to allow the entry of one-sided closing price orders after 4 p.m. (ET). The Phlx has submitted a proposal which virtually copies the NYSE proposal in that it would establish two off-hours sessions to compete with the NYSE OHT facility. In addition, the Division expects the Amex to file a proposal for its own full-scale OHT facility within a few days.

In addition, the Division notes that, although the PSE currently is open for one half hour beyond the traditional 9:30 a.m. to 4 p.m. trading session on the NYSE, the PSE's 4 to 4:30 p.m. session differs from the NYSE's OHT facility in that it does not operate contemporaneously with the OHT system and is designed for different types of transactions. Furthermore, the Division notes that, when the PSE proposed to extend its trading hours until 4:30 p.m., the PSE was not required to provide a linkage to the other marketplaces. Accordingly, the Commission does not believe that the lack of a linkage of the OHT facility is necessarily inconsistent with Section 11A, at the present time. Of course, depending upon how trading develops, the Commission may wish to revisit this issue.

In the Commission release approving the NYSE OHT facility, the Commission noted that approval of the NYSE's OHT facility raised a number of other concerns which may be termed as "intermarket" issues. The questions raised include: (1) Whether the Intermarket Trading System ("ITS") should

[39] The CBT and CME brought this litigation out of concern with competition with Delta. *See CBT v. SEC, supra* note 13, at 1272.

[40] Letter from Richard C. Breeden, Chairman, Securities and Exchange Commission, to John M. Dingell, Chairman, House Committee on Energy and Commerce, dated April 5, 1990.

be operational during any time period when both the NYSE Crossing Sessions and another ITS market are accepting orders; (2) whether the NYSE should be required to permit orders entered "GTX" on the books of regional specialists to "migrate" automatically at the close(s) of such regional exchanges to the NYSE Crossing Session I order book; (3) if so, with what priority, if any; and (4) who should bear the cost of developing a working mechanism for such transmittal.

In its consideration of these intermarket, or NMS, issues, the Commission noted that the effect of the NYSE OHT system on similar systems that the regional exchanges or the NASD may propose, as well as its effect on orders on the limit order books of both NYSE and regional specialists, is unclear and speculative at the current time. Thus, the two year approval period of the NYSE OHT faciltiy and the regional stock exchanges' proposals will provide the Commission and the NYSE, as well as competing markets, the opportunity to observe and evaluate after-hours trading. The Commission intends to consider many of these issues actively during the two-year period and to impose such requirements, if any, as it determines are appropriate to provide intermarket protections and to further the goal of a National Market System. The Commission will, in this regard, monitor, and be influenced by, the actual operation of the NYSE Crossing Sessions and the regional exchange after-hours systems.

Because at least one other exchange has proposed a trading session similar or identical to the NYSE's OHT facility, significant NMS issues may need to be resolved jointly by the NYSE, the competing markets, and the Commission. Again, we emphasize that the two year temporary approval period will provide an opportunity for the Commission and market participants to observe the actual operation of the OHT facility. Based on these observations the Commission, the NYSE, and other market participants will be in a better position to evaluate whether further steps to link the OHT facility with other markets are necessary or appropriate to protect investors or promote fair competition.

It is possible that the operation of the NYSE's OHT facility may indeed result in a reduction of order flow to the regional exchanges (although we believe that the regional exchanges are responding competitively, see *infra*, Response to Question 6). The Division believes, however, that any reduction of regional exchange market share resulting from the NYSE's OHT system would be due to the enhanced competition such a system provides, and not a result of any anti-competitive aspects of the OHT facility. Innovation that provides marketplace benefits to attract order flow to the NYSE does not result in unfair competition if the other markets are free to compete in the same manner. In fact, the Commission believes that the OHT sessions should enhance competition by providing a service to customers that other exchanges are not currently providing.

It is noteworthy that in the weeks prior to and immediately following Commission approval of the NYSE's OHT facility, the four regional exchanges who opposed the OHT facility, the BSE, MSE, Phlx, and PSE, submitted their own proposals to establish various systems to compete with the NYSE sessions. Although the proposals of the regional exchanges differed (*e.g.*, while the four regional exchanges espoused narrower proposals designed principally to provide primary market protection for limit orders on the books of their specialists, the Phlx also proposed an after-hours system that is virtually identical to the NYSE's OHT facility), the filings all had in common the desire to keep their own individual marketplaces on a competitive level with the primary U.S. marketplace—the NYSE. The Division believes that the responses by the regional exchanges to the NYSE's new systems demonstrate the competitiveness of the U.S. markets. As a result of these new initiatives, U.S. investors soon will have new opportunities for trading, including the ability to have their orders executed after the close of the regular 9:30 a.m. to 4 p.m. trading session at the closing price established on the primary market.

5. *To what extent is the Commission concerned that the emergence of proprietary trading systems may result in public customer orders migrating from an auction market which ensures price discovery and an opportunity for price improvement, to a non-auction market where the price is fixed?*

Auction markets provide investors with important benefits, including the opportunity for price improvement, and the Commission traditionally has been committed to fostering the maintenance of auctions for the stocks whose characteristics justify this type of trading.

At the same time, the Commission also must play the role assigned to it by Congress under section 11A, *i.e.*, letting private sector initiatives lead the way and acting as a promoter of competition rather than as an "economic czar." One of the principal fields of competition under our current market structure is between primary and regional markets and between the over-the-counter market for listed stocks and exchange markets.

As described above, the regional exchanges and some third market market makers (such as Madoff) offer small order execution systems that are passively priced off the primary markets as one means of competition with the primary markets. Apparently, the regional exchanges, the market makers, the brokers entering customer orders into these systems, and the customers themselves have determined that assured and speedy execution of some small orders is a greater benefit than the opportunity to obtain price improvement. These systems have been the principal source of the migration of public customer orders from the auction process.

Whether proprietary trading systems or the NYSE's after-hours system also will attract public customer orders from the regular auction process is not clear. Proprietary trading systems such as Instinet's Crossing Network and Jefferies' POSIT system are designed to attract institutional, not individual customer, order flow. We would also note that Instinet's regular trading system (i.e. the non-crossing system) is frequently used to obtain price improvement via the entry of orders priced in between the bid and ask displayed on the exchange and NASDAQ markets. In addition, WASI is an auction system that provides an alternative to investors not wishing to use the fixed price systems for after-hours trading.

6. *Some of the regional stock exchanges have expressed a concern that aspects of the New York's off-hours trading proposal will give the NYSE an anti-competitive advantage over the regional exchanges. Specifically, concerns have been expressed that New York's proposed Crossing Session I will cause "good 'till cancelled" orders to migrate from the regional exchanges onto the "good 'till cancelled" orders being offered during Crossing Session I—with the result that public customers will not have the benefit of the price discovery mechanism afforded by an auction market. Is the SEC examining these concerns, and how does the Commission plan to deal with the possibility of a migration taking place that would undercut the NMS concept and disadvantage the ability of public customers to get the best execution of their orders?*

In public comment letters opposing the NYSE's OHT facility, several of the regional stock exchanges stated that the NYSE's OHT facility is anti-competitive because the availability of the OHT facility will result in the movement of "GTC" ("good till cancelled") orders from the regional exchanges to the NYSE. The exchanges conclude that this will occur because broker-dealers will want to ensure that customer orders receive an opportunity to participate in Crossing Session I and to provide customer orders with primary market price protection. The Division believes that it is indeed a possibility that the establishment of the NYSE's Crossing Session I, where GTC orders entered during the regular 9:30 a.m. to 4:00 p.m. trading session and designated as GTX orders ("good 'till cancelled, executable through crossing session") may migrate for possible execution to Crossing Session I, could result in public customers choosing to designate many, or potentially all, of their GTC orders as GTX. The Division does not believe, however, that this contravenes the principles underlying the NMS nor do we believe it disadvantages the ability of public customers to get the best execution of their orders.

At the outset, the Division emphasizes that GTX orders in the NYSE's OHT facility are not denied the benefits of the price discovery mechanism offered by an auction. GTX orders, which are entered originally into the regular 9:30 a.m. to 4 p.m. trading session as GTC orders, are exposed to the primary market's auction system during the trading day. If designated GTX, those orders which are at, or better than, the NYSE closing price may migrate to the NYSE's Crossing Session I for a possible execution. In NYSE's Crossing Session I, the price at which orders will be executed (*i.e.*, the NYSE closing price) is a price that has been reached during the auction market operating between 9:30 a.m. and 4 p.m. This price is not an artificial price, but rather one that was reached through the

pricing mechanism of an auction market where buyers and sellers interact.

In addition, because the NYSE's closing prices would be known in advance to any investor who may choose to participate in Crossing Session I, investors will have the option of canceling their Crossing Session I orders if, after evaluating the 4:30 p.m. PSE closing price or other market information, they decide they do not want the primary market closing price. If the NYSE closing price does not remain a valid price at 5:00 p.m., then the NYSE would expect to find a dearth of one-sided orders on one side of the market, in which case no executions would occur.

Finally, as discussed in the answer to Question 4, the regional exchanges have proposed their own responses to the NYSE's after-hours session. Thus, to the extent GTC orders migrate to the NYSE, it would reflect market participants' preference for the NYSE's system over the alternative provided by its competitors.

7. *Please provide the Subcommittee with a description of the issues and options the Commission is currently considering in its examination of electronic trading systems, including issues relating to the transparency of these markets, possible integration of off-hours trade reporting with real-time reporting for equity transactions effected during the normal trading day, and the need for effective surveillance of these markets.*

As described above in the answer to Question 3, we propose that the Commission reactivate consideration of proposed rule 15c2–10 as a means to create a comprehensive and effective regulatory structure for proprietary trading systems. The rule as proposed imposes surveillance obligations on the operators of these systems.

As indicated in the answer to Question 1 above, increased transparency for after-hours trades effected in proprietary trading systems (and exchange operated after-hours trading systems as well) is a possible option. Particularly after we have received the six month report the NYSE is required to submit on the transparency of its after-hours trading system, the Commission will be in a better position to evaluate alternative approaches. Finally, as discussed in the answer to Question 3 above, you have suggested the development of legislation providing the Commission more flexibility in granting exemptions from the registration requirements of Section 6 of the Act.

See also response to question 1 in its entirety.

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[Release No. IC–18847; 812–7534]

ML Venture Partners II, L.P., et al.; Application

July 14, 1992.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act").

APPLICANTS: ML Venture Partners II, L.P. ("MLVP II"), Merrill Lynch Venture Capital Inc., Merrill Lynch KECALP L.P. 1987 ("KECALP"), KECALP Inc., and ML Technology Ventures, L.P. ("MLTV").

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) permitting transactions that otherwise may be prohibited by sections 17(d) and 57(a)(4) of the 1940 Act and rule 17d–1 thereunder.

SUMMARY OF APPLICATION: Applicants seek an order permitting certain transactions that otherwise may be prohibited by sections 17(d) and 57(a)(4) of the 1940 Act and rule 17d-1 thereunder in connection with the termination of BBN Integrated Switch Partners, L.P. ("BBN Switch"), a partnership in which MLVP II, MLTV, and KECALP are the sole limited partners.

FILING DATES: The application was filed on June 11, 1990, and amendments to the application were filed on December 14, 1990, May 3, 1991, and July 9, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 10, 1992, and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, World Financial Center, North Tower, New York, New York 10281.

FOR FURTHER INFORMATION CONTACT: H.R. Hallock, Jr., Special Counsel, at (202) 272–3030 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. MLVP II, a Delaware limited partnership, is a business development company under the 1940 Act. Its investment objective is to seek long-term capital appreciation through venture capital investments. MLVP II has five General Partners, consisting of four individuals (the "MLVP II Individual General Partners") and one managing general partner, MLVP II Co., L.P. (the "MLVP II Managing General Partner"). Three of the MLVP II Individual General Partners are individuals who are not "interested persons" of MLVP II within the meaning of section 2(a)(19) of the 1940 Act (the "MLVP II Independent General Partners"). The remaining MLVP II Individual General Partner is an affiliated person of the MLVP II Managing General Partner.

2. The MLVP II Individual General Partners supervise the operations of MLVP II and perform all duties imposed by the 1940 Act on directors of business development companies. The MLVP II Independent General Partners assume the responsibilities the 1940 Act imposes on the non-interested directors of a business development company. The MLVP II Managing General Partner provides, or arranges for the provision of, management services in connection with the venture capital investments of MLVP II. The general partner of the MLVP II Managing General Partner is Merrill Lynch Venture Capital Inc. (the "MLVP II Management Company"). The MLVP II Management Company, an indirect subsidiary of Merrill Lynch & Co., Inc. ("ML & Co."), performs administrative services for MLVP II under an agreement with MLVP II. Since May 23, 1991, DLJ Capital Management Corporation has provided management services in connection with the venture capital investments of MLVP II pursuant to a sub-management agreement.

3. KECALP, a Delaware limited partnership, is a registered closed-end investment company and an "employees' securities company" within the meaning of section 2(a)(13) of the 1940 Act. Its investment objective is to seek long-term capital appreciation. KECALP Inc. (the "KECALP General Partner"), the general partner for KECALP and an indirect wholly-owned subsidiary of ML & Co., is responsible for managing and making investment decisions for KECALP.

4. MLTV, a Delaware limited partnership, invests in research and development ventures. ML R&D Co., L.P. (the "MLTV General Partner"), the general partner of MLTV, is a limited partnership whose general partner is an indirect wholly-owned subsidiary of ML & Co.

5. BBN Switch, a Delaware limited partnership, was organized in 1987 to develop, manufacture, and market a new line of communications switching

equipment. The limited partners of BBN Switch are MLVP II, MLTV, and KECALP (collectively, the "Limited Partners"). The general partner of BBN Switch is BBN Integrated Switch Development Corporation ("BBNDC"), a wholly-owned subsidiary of a diversified high technology corporation, Bolt Beranek & Newman Inc. ("BBN").

6. On June 11, 1987, MLTV acquired 44.9% of the limited partnership interests (the "Interests") in BBN Switch together with warrants issued by BBN (the "BBN Warrants") entitling MLTV to purchase shares of BBN Common Stock. Concurrently, on behalf of MLVP II and KECALP, the MLVP II Management Company and the KECALP General Partner acquired 50.111% and 4.989% Interests, respectively, in BBN Switch together with BBN Warrants relating to the purchase of shares of BBN Common Stock. The MLVP II Management Company and the KECALP General Partner acted as nominees for MLVP II and KECALP because MLVP II, KECALP, and MLTV could not make the investments concurrently without obtaining prior exemptive relief from the SEC authorizing transactions otherwise prohibited under sections 17(d) and 57(a)(4) of the 1940 Act and rule 17d-1 thereunder. The Limited Partners, the MLVP II Management Company, and the KECALP General Partner applied for and were granted an order permitting the joint investments and, with respect to MLVP II and KECALP, permitting the acquisition of investments from affiliated persons. Investment Company Act Release No. 16895 (Mar. 24, 1989) (the "Prior Order").

7. On March 29, 1989, after receipt of the Prior Order, the Individual General Partners of MLVP II met to consider the matter. Prior to such meeting, the Independent General Partners had been furnished various memoranda and reports relating to the status of the BBN Switch project and the fair market value of the investment in BBN Switch. At the meeting, the Independent General Partners determined that: (i) The investment in BBN Switch and accompanying BBN Warrants was an appropriate investment for MLVP II and (ii) the fair market value of such investment was not less than $5,522,478 (representing the amount the MLVP II Management Company paid for the investment plus carrying costs). MLVP II therefore made a cash payment in this amount to the Management Company on March 29, 1989.

8. The board of directors of the KECALP General Partner conducted a similar review and reached the same conclusions at a meeting on March 31, 1989. Accordingly, on that date, KECALP made a cash payment of $549,958 to the KECALP General Partner (representing both the cost to the KECALP General Partner of purchasing the investment and its carrying costs).

9. In September 1989, the MLVP II Managing General Partner recognized the emergence of a number of problems with the BBN Switch project, including a decline in the market for private switching networks and increased competition, and determined that it was advisable to obtain special expertise to evaluate the feasibility of the project. At a meeting held in November 1989, the Independent General Partners of MLVP II approved the retention of a consultant (the "Consultant") to conduct the evaluation.

10. The Consultant evaluated the status of the BBN Switch project's development and plans for future development. It concluded that BBN Switch's technology was not cost competitive without major redesign work and that, without additional funding, the projected revenue from sales of the product would not support the ongoing development needed to stay in the market. The Consultant estimated that additional investments of approximately $7 million would be needed to develop the technology of BBN Switch sufficiently to attract a corporate investor. The Consultant indicated that BBN Switch should seek at least $20 million from such an investor.

11. By early 1990, the total funds allocated to the BBN Switch research program had been spent, and BBNDC, which had already made additional capital contributions to BBN Switch, had expressed its intention to not provide further funding. The MLVP II Managing General Partner, The KECALP General Partner, and the MLTV General Partner therefore determined that it would not be prudent for the Limited Partners to continue funding the project. Each of those three General Partners also determined that it would not be in the best interests of the Limited Partners to attempt to sell the technology to a third party because, based on their review of the Consultant's report and subsequent discussions with the Consultant, they concluded that the technology was of little or no value to a third party and, further, that the costs that would be incurred in attempting to find a purchaser of the technology probably would exceed the amount to be realized in any sale.

12. The MLVP II Management Company, on behalf of MLVP II, KECALP, and MLTV, subsequently negotiated matters relating to the termination of the BBN Switch project with BBN in March and April 1990. In the course of these negotiations, the MLVP II Management Company, the KECALP General Partner, and the MLTV General Partner considered, and discussed with counsel, any potential claims relating to the investment in BBN Switch, the issuance of the BBN Warrants, and the performance of BBN, BBN Communications Corporation ("BBNCC") (a wholly-owned subsidiary of BBN that had entered into a development agreement with BBN Switch), and BBNDC of their obligations under the agreements entered into in connection with the BBN Switch project. Counsel advised the MLVP II Management Company, the KECALP General Partner, and the MLTV General Partner that, based on its knowledge, there was no factual basis for asserting any such claims. The negotiations with BBN culminated in a proposal whereby MLVP II, KECALP, and MLTV would relinquish all rights to the technology and transfer all other assets of BBN Switch to BBN, agree to cancel all obligations under the terms of the BBN Switch partnership agreement, and enter into mutual releases, all in exchange for an aggregate of 100,000 restricted shares of BBN Common Stock.

13. At meetings held on April 16 and 27, 1990, the Independent General Partners of MLVP II and the board of directors of the KECALP General Partner, respectively, were informed of the findings of the Consultant and the proposed termination of the BBN Switch project. At such meetings, the MLVP II Independent General Partners and the board of directors of the KECALP General Partner reviewed the investment in BBN Switch and considered the several alternatives discussed above in paragraphs 11 and 12. They determined that it would be in the best interests of the respective partnerships to accept BBN's offer. In accepting such offer, the directors of the KECALP General Partner and the MLVP II Individual General Partners were informed of, and considered, among other things, the agreement to release BBN, BBNCC, BBNDC, BBN Switch and their affiliates from all present and future claims and the discussions with counsel in this regard. They determined that the value of the BBN Common Stock to be provided to the respective partnerships was a fair value to receive in exchange for the consideration to be provided by such partnerships.

14. Under the terms of an agreement executed on April 27, 1990 among BBN, BBNCC, BBNDC, and the Limited

Partners (the "Agreement"), the Limited Partners consented to the termination and dissolution of BBN Switch. The Agreement is to become effective upon receipt of the requested exemptive order or, alternatively, upon receipt of legal opinions satisfactory to the Limited Partners that such an order is not required. Under the Agreement, BBN Switch agreed to transfer all rights to the technology and all other assets of BBN Switch to BBNCC or another subsidiary of BBN. In addition, the Limited Partners agreed to release BBN, BBNCC, BBNDC, BBN Switch and their respective affiliates from all claims relating to the Limited Partners' investment in BBN Switch, the issuance of the BBN Warrants, or the performance by BBN, BBNCC, or BBNDC of their obligations under agreements entered into in connection with the BBN Switch project. Similarly, BBN, BBNCC, and BBNDC released the Limited Partners from all claims relating to BBN Switch that such parties had against the Limited Partners.

15. In consideration of such agreements and releases, BBN issued to the Limited Partners an aggregate of 100,000 shares of BBN Common Stock. Such shares are to be distributed among the Limited Partners on a pro rata basis in relation to each Limited Partner's capital contribution to BBN Switch. On April 27, 1990, the date of the Agreement, the shares of BBN Common Stock closed at $4.625 on the New York Stock Exchange, and the value of the stock to be distributed to MLVP II, KECALP and MLTV at that time was $231,763, $23,074, and $207,663, respectively.[1] BBN has delivered the 100,000 shares of its Common Stock to an escrow agent under an escrow agreement among the various parties pending receipt of the requested exemptive order.

16. In February and March, 1992, respectively, the Independent General Partners of MLVP II and the directors of the KECALP General Partner again considered the investments by MLVP II and KECALP in BBN Switch and the terms on which it is proposed that such partnership be liquidated. Following a review of the circumstances under which the investment had been acquired and the Consultant's report with respect to such investment, the Independent General Partners of MLVP II re-approved the terms of the proposed dissolution of BBN Switch and the determinations previously made by the Independent General Partners and determined that such actions are in the best interests of MLVP II. The board of directors of the KECALP General Partner made the same determinations with respect to the investment of KECALP in BBN Switch.

[1] On July 10, 1992, the shares of BBN Common Stock closed at $4.25 on the New York Stock Exchange. Wall St. J., July 13, 1992. Thus, the total value of the stock to be distributed to MLVP II, KECALP and MLTV on such date was $425,000.

Applicants' Legal Analysis

1. Applicants request an order under Section 6(c) of the 1940 Act permitting the transactions described above relating to the termination of BBN Switch that otherwise would be prohibited under the provisions of sections 17(d) and 57(a)(4) of the 1940 Act and rule 17d–1 thereunder. Applicants are not requesting the SEC to evaluate the implementation of the Prior Order.[2]

2. Section 17(d) of the 1940 Act and Rule 17d–1 thereunder make it unlawful for any affiliated person of a registered investment company, acting as principal, to effect any transaction in which such registered company is a joint participant with such person unless an application regarding such joint arrangement has been filed with and approved by the SEC. In addition, section 57(a)(4) of the 1940 Act makes it unlawful for any person who is related to a business development company in a manner described in section 57(b)(2), acting as principal, knowingly to effect any transaction in which such business development company is a joint participant with such person in contravention of such rules and regulations as the SEC may prescribe to limit or prevent such participation by the business development company on a basis less advantageous than that of such person.

3. The affiliated persons referred to in section 17(d) and Rule 17d–1 include the KECALP General Partner and persons under common control with the KECALP General Partner (including MLVP II and MLTV). Similarly, the persons specified in section 57(b)(2) include the MLVP II Management Company and persons under common control with the MLVP II Management Company (including KECALP and MLTV).

4. The SEC has not adopted any rules or regulations under Section 57(A)(4). Section 57(i) of the 1940 Act provides that, until the adoption of rules and regulations under section 57(a), the rules and regulations of the SEC under Section 17(d) applicable to registered investment companies shall apply to transactions subject to section 57(a). Paragraph (b) of rule 17d–1 provides, in part, that, in passing on applications subject to that Rule, the SEC must consider whether the participation of a registered company in the joint arrangement on the basis proposed is consistent with the provisions, policies and purposes of the 1940 Act and the extent to which such participation is on a basis different from or less advantageous than that of other participants.

5. As here relevant, section 6(c) authorizes the SEC to exempt any transaction or class of transactions from any provision of the 1940 Act to the extent an exemption is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act. Applicants request that the order be issued under section 6(c), rather than rule 17d–1, to limit the focus of the application to the proposed termination of BBN Switch and not extend to an analysis of the investment in BBN Switch that might be required under rule 17d–1(b) in a proceeding for an order pursuant to rule 17d–1.

6. Applicants submit that the proposed transactions in connection with the termination of BBN Switch are consistent with the standards set forth in both section 6(c) and rule 17d–1. The MLVP II Managing General Partner, the MLVP II Independent General Partners, the MLTV General Partner and the KECALP General Partner have independently reviewed and considered the terms of the Agreement and the advice of the Consultant retained to evaluate the BBN Switch research and development project. Following review of these matters, the MLVP II Managing General Partner, the MLVP II Independent General Partners, the MLTV General Partner and the KECALP General Partner each determined that the participation of the Limited Partners in the transactions contemplated by the Agreement will be on the same basis in proportion to their investments in BBN Switch, that the terms of the Agreement and consummation of the transactions

[2] Any order issued on the application would relate solely to the termination of the Limited Partners' investment in BBN Switch. In this regard, the Division of Investment Management notes that the likely effect of failing to permit the proposed joint settlement with BBN Switch would be the loss of the opportunity for each Limited Partner to recoup a small portion of its investment. Furthermore, the Division expresses no views with respect to the circumstances under which MLVP II and KECALP acquired the Interests in BBN Switch and the BBN Warrants from the Management Company and the KECALP General Partner, respectively, in March of 1989. Similarly, the Division takes no position with respect to the review and re-approval of the BBN investment by the MLVP II Independent General Partners and the directors of the KECALP General Partner in February and March, 1992, respectively.

contemplated thereby will not result in the overreaching of any of the Limited Partners by an affiliated person thereof, and that, in light of the relevant circumstances, such transactions are in the respective best interests of MLVP II, MLTV, KECALP, and their respective limited partners. In addition, as noted above, the MLVP II Independent General Partners and the directors of the KECALP General Partner reviewed and re-approved the terms on which BBN Switch is proposed to be liquidated. Finally, Applicants believe that the proposed transactions in connection with the termination of BBN Switch would be consistent with the provisions, policies, and purposes of the 1940 Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-17198 Filed 7-21-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-18845; 812-7834]

Mutual Fund Group; Application

July 13, 1992.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for an order under the Investment Company Act of 1940 (the "Act").

APPLICANT: Mutual Fund Group (the "Trust").

RELEVANT ACT SECTIONS: Order requested under section 17(d) of the Act and rule 17d-1 thereunder.

SUMMARY OF APPLICATION: The Trust seeks an order permitting the Trust's series and certain related investment companies, and the investment advisers to such investment companies, jointly to enter into master repurchase agreements with non-affiliated financial institutions such as broker-dealers and banks.

FILING DATES: The application was filed on December 6, 1991, and will be amended during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving the applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 7, 1992 and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 156 West 56th Street, New York, New York 10019.

FOR FURTHER INFORMATION CONTACT: C. Christopher Sprague, Senior Staff Attorney, at (202) 272-3035, or Nancy M. Rappa, Branch Chief, at (202) 272-3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. The Trust is registered under the Act as an open-end management investment company, and currently offers the following series of shares (each such series, a "Fund"): Vista California Tax Free Money Market Fund, Vista Global Money Market Fund, Vista New York Tax Free Money Market Fund, Vista Tax Free Money Market Fund, Vista U.S. Government Money Market Fund (collectively, the "Vista Money Market Funds"), Vista U.S. Government Income Fund, Vista New York Tax Free Income Fund, Vista Tax Free Income Fund, Vista Growth and Income Fund, and Vista Capital Growth Fund (collectively, the "Non-Money Market Funds"). Under a dual distribution system, the Vista Money Market Funds may offer two distinct classes of shares called the "Vista Shares" and the "Vista Premier Shares."[1]

2. Initially, only the Vista Money Market Funds would enter into the master repurchase agreements described below. However, the Trust requests that the order of exemption apply to each of the Funds (including their respective classes), to future series of the Trust, and to other registered open-end investment companies (a) advised by The Chase Manhattan Bank, N.A. ("Chase") or Chase Lincoln First Bank, N.A. ("Chase Lincoln") (each, and "Adviser") or an investment adviser that is under common control with an Adviser (as "control" is defined by section 2(a)(9) of the Act), (b) the principal underwriter of which is Vista-Broker Dealer Services, Inc. (the "Distributor") or a principal underwriter that is under common control with the Distributor (as "control" is defined by section 2(a)(9) of the Act), and (c) which hold themselves out to investors as being related for purposes of investment and investor services. Any such series or investment company will adhere to the representations set out in the application with respect to its repurchase transactions.

3. The net asset value per share of each of the Vista Money Market Funds is determined daily as of 2:30 p.m. Eastern Time. Currently, to be executed on a given day, an order to purchase shares of a Vista Money Market Fund must be received and accepted by Chase or Chase Lincoln prior to 2:30 p.m. Eastern Time that day, which is the latest time orders may be placed for overnight investment of funds received that day. Purchase orders received by Chase or Chase Lincoln after 2:30 p.m. on a given day are executed the next business day. Orders for the purchase of shares of the Vista Money Market Funds are executed only when Federal or other funds are immediately available to Chase or Chase Lincoln for investment by the Trust.

4. Purchasers of the Trust's shares include customers of Chase and Chase Lincoln or their affiliates who maintain customer-directed, non-discretionary accounts at Chase, Chase Lincoln, or their affiliates. In accordance with their customer's standing instructions, the Advisers automatically will invest excess cash balances in their customer's custody, agency, or other non-discretionary accounts in shares of one or more of the Vista Money Market Funds. These "sweep" transactions will be effected automatically by computer as of 2:30 p.m. Eastern Time each business day. The tabulation of the transaction activity in each such customer account will be completed later during the day (the "Completion Time"). Normally, the Completion Time will not be later than 3:30 a.m. Eastern Time the following morning.

5. The net income of each Vista Money Market Fund is determined daily as of 2:30 p.m. Eastern Time on days when the New York Stock Exchange is open for trading, and also is declared daily as a dividend to the shareholders of the Vista Money Market Funds at that time. However, if Chase or Chase Lincoln accepts an order as of 2:30 p.m. Eastern Time from one or more of its customers instructing Chase or Chase Lincoln to invest the customer's excess daily cash balances in one or more of the Vista Money Market Funds, and such daily cash balances are not a quantifiable dollar amount until after

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[1] See Investment Company Act Release Nos. 17359 (June 19, 1990) (notice) and 17590 (July 17, 1990) (order).

midnight of that same day, then, without the prior establishment of a "sweep" program providing for special arrangements for investment of the proceeds of these orders, dividends would be payable by the appropriate Vista Money Market Fund on shares purchased pursuant to such orders but the proceeds of such orders would remain uninvested overnight and dividends to other Vista Money Market Fund shareholders would be diluted. To address that concern, the Advisers propose to enter into repurchase transactions on behalf of the Trust with non-affiliated financial institutions by 2:30 p.m. Eastern Time each business day, with respect to amounts estimated to be received by each of the Vista Money Market Funds after 2:30 p.m. Eastern Time through the operation of the "sweep" program. Confirmation of the exact principal amount of the repurchase transaction would occur on the following business day. These repurchase agreements would be substantially similar to the form of Master Repurchase Agreement developed by the Public Securities Association, and would be a permitted investment under the investment policies of each Vista Money Market Fund.

6. Each Adviser will enter into a repurchase transaction on behalf of a Vista Money Market Fund in an amount which it estimates, based upon its experience in administering its computer sweep program, to be sufficient to invest the funds that the Vista Money Market Fund will receive through sweep transactions that day. Once the repurchase agreement is made, Chase or Chase Lincoln would wire the sale price of the transferred securities to the Fund's account with the Trust's custodian in immediately available funds. At the same time, the seller in the transaction would take such action as was necessary to transfer such securities to the Fund's account and to perfect a security interest in favor of the Fund in the securities at the time of transfer. Until the Completion Time that evening, the Fund would have a perfected security interest in all of the securities transferred.

7. To the extent that a repurchase transaction entered into on behalf of a Vista Money Market Fund was sufficient to make such Fund fully invested with respect to its sweep funds, the Fund's account would reflect the specific amount it had, in fact, invested in the transaction (including its ownership of the eligible securities purchased by such investment). If the repurchase transaction was not sufficient to make the Fund fully invested with respect to its sweep funds, the Fund's records would reflect its investment in the entire amount of the repurchase transaction and an uninvested cash position. The latter scenario is not likely to occur, according to the Trust, because each Adviser normally can predict accurately the likely amount of sweep funds, and normally will enter into a repurchase agreement in an amount greater than the estimated sweep funds. To the extent that the total amounts credited to the account of the seller when it transferred eligible securities the previous day exceeded a Fund's assets that were available for investment, each Adviser would have purchased such securities with its own funds, and would have entered into repurchase transactions with the seller for its own accounts.

8. On the next business day, based upon the amount invested by a Fund through operation of the sweep program, the seller and the Fund's custodian would confirm by telephone the amount of the repurchase transaction that the Fund had in fact entered into with its own assets, and the seller would issue the required telex or wire confirmations of the specific terms of the Fund's repurchase transaction. In addition, the seller would issue separate confirmations to each Adviser for its own account confirming that those eligible securities transferred by the seller the previous day which the Fund had not purchased with its own assets had, in fact, been purchased by the Adviser with its funds. Apart from the different amounts of the repurchase transactions, the terms of the transactions and the confirmations to a Fund and to each Adviser would be identical.

9. Ordinarily, each repurchase transaction effected with sweep funds will be secured by one issue of Treasury notes or other securities. To the extent that any such repurchase transaction is secured by two or more issues of securities differing as to quality, maturity, or rate, each security will be apportioned between the Fund and the Advisers *pro rata* to the extent possible. If such *pro rata* apportionment is not possible, securities will be apportioned in a manner that the Advisers believe will leave each party in a comparably secured position.

Applicant's Legal Analysis

1. Section 17(d) of the Act makes it unlawful for any affiliated person of a registered investment company, acting as principal, to effect any transaction in which such registered investment company is a joint or a joint and several participant with such affiliated person in contravention of such rules and regulations as the Commission may prescribe. Rule 17d–1 thereunder states that in passing upon applications for an exemption from section 17(d), the Commission will consider whether the participation of the registered investment company in the joint enterprise, joint arrangement, or profit-sharing plan on the basis proposed is consistent with the provisions, policies and purposes of the Act, and the extent to which such participation is on a basis different from or less advantageous than that of the other participants. To the extent that an Adviser, as an affiliated person of a Fund, engages on a principal basis in a repurchase transaction with a Fund, the Adviser and the Fund may be deemed to be participating in such a joint arrangement or joint enterprise. The Trust contends, however, that a Fund's participation in the proposed joint repurchase transactions will not be on a basis different from, or less advantageous than, that of the Adviser.

2. The Trust states that the proposed repurchase transactions will provide only benefits to shareholders of the Funds by investing sweep funds on the day orders are executed, thereby reducing and dilution in daily dividends. The Trust also notes that because the repurchase agreement to be used by the Funds will be substantially similar to that developed by the Public Securities Association, each Fund's rights vis-a-vis sellers will be comparable to those generally present in the industry. A Vista Money Market Fund will not enter into any repurchase transaction with the Advisers, their affiliates, or any other affiliated person of the Trust. In addition, the Funds will conduct their repurchase transactions in accordance with the Commission's releases on repurchase agreements (*i.e.*, Investment Company Act Release Nos. 10666 (Apr. 18, 1979) and 13005 (Feb. 2, 1983)).

3. The Trust submits that the proposed repurchase transactions are reasonable and fair to it and each of the Funds, do not involve overreaching on the part of any person, and are consistent with the provisions, policies, and purposes of the Act. The Trust states further that the order requested is appropriate in the public interest and consistent with the protection of investors.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–17199 Filed 7–21–92; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ended July 10, 1992

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 48233.
Date filed: July 6, 1992.
Parties: Members of the International Air Transport Association.
Subject: Telex—Mail Vote 577. Fares Between Hiroshima and Hong Kong R–1 to R–7.
Proposed Effective Date: July 22, 1992.

Docket Number: 48235.
Date filed: July 8, 1992.
Parties: Members of the International Air Transport Association.
Subject: TC31 Reso/P 0932 dated June 19, 1992. North America-French Polynesia/New Caledonia R–1 to R–9, intended effect: January 1, 1993. TC31 Reso/P 0933 dated June 19, 1992, South America-Southwest Pacific Resos R–10 to R–18, intended effect: October 1, 1992.

Docket Number: 48241.
Date filed: July 10, 1992.
Parties: Members of the International Air Transport Association.
Subject: Telex—TC23 Mail Vote 578, Fares Between Kabul and Tehran R–1 To R–3.
Proposed Effective Date: August 1, 1992.

Phyllis T. Kaylor,
Chief, Documentary Services Division.
[FR Doc. 92–17270 Filed 7–21–92; 8:45 am]
BILLING CODE 4910–62–M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q during the Week Ended July 10, 1992

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under subpart Q of the Department of Transportation's Procedural Regulations (see 14 CFR 302.1701 et seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 48237.
Date filed: July 9, 1992.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: August 6, 1992.
Description: Application of American Airlines, Inc., pursuant to section 401 of the Act and subpart Q of the Regulations applies for a certificate of public convenience and necessity to engage in foreign air transportation of persons, property, and mail between Los Angeles, California, and Nagoya, Japan.

Docket Number: 48238.
Date filed: July 9, 1992.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: July 6, 1992.
Description: Application of Air Micronesia, Inc., Continental Airlines, Inc. and Continental Micronesia, Inc., pursuant to section 401(h) of the Act and subpart Q of the Regulations, requests approval of the transfers to Continental Micronesia of Continental's certificate authority for Routes 171 (South Pacific) and 577 (Honolulu-Tokyo), a portion of Segment 10 of its certificate authority for Route 29–F (Guam/Saipan-Indonesia/Malaysia/Thailand/Sri Lanka/India), Segment 2 of its certificate authority for Route 176 (Guam/Saipan-Sydney/Brisbane), and its Guam-Nagoya exemption authority.

Docket Number: 48240.
Date filed: July 9, 1992.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: August 6, 1992.
Description: Application of Continental Micronesia, Inc. pursuant to section 401(d)(1) of the Act and subpart Q of the Regulations, applies for a certificate of public convenience and necessity authorizing scheduled interstate/overseas air transportation.

Docket Number: 48242.
Date filed: July 10, 1992.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: August 7, 1992.
Description: Application of Tower Air, Inc. pursuant to section 401 of the Act and subpart Q of the Regulations applies for amendment of its certificate of public convenience and necessity for Route 401 to conduct additional foreign air transportation between points in the United States of America and points in the Dominican Republic.

Docket Number: 48244.
Date filed: July 10, 1992.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: August 7, 1977.
Description: Application of Malev Hungarian Airlines, pursuant to section 402 of the Act and subpart Q of the Regulations, requests renewal of its foreign air carrier permit for authority to engage in foreign air transportation of persons, property and mail between Budapest and the co-terminal points New York, Chicago and Los Angeles (code-sharing only) via intermediate points in Europe and Canada.

Phyllis T. Kaylor,
Chief, Documentary Services Division.
[FR Doc. 92–17271 Filed 7–21–92; 8:45 am]
BILLING CODE 4910–62–M

Federal Aviation Administration

Air Traffic Subcommittee of the Aviation Rulemaking Advisory Committee; Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration Air Traffic Subcommittee of the Aviation Rulemaking Advisory Committee.

DATES: The meeting will be held on August 10, 1992, at 9:30 a.m.

ADDRESSES: The meeting will be held at the Aerospace Industries Association of America, 1250 Eye Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Aaron Boxer, Designated Federal Official, Air Traffic Rules and Procedures Service, Federal Aviation Administration, telephone: 202–267–8783.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II), notice is hereby given of a meeting of the Air Traffic Subcommittee to be held on August 10, 1992, at the Aerospace Industries Association of America, 1250 Eye Street, NW., Washington, DC. The agenda for this meeting will include:

- A progress report from the General Aviation Mode S Working Group;
- A progress report from the Pilot Procedures at Non-Towered Airports Working Group;
- A progress report from the Unmanned Aerospace Vehicles Working Group;

• The status of the subcommittee's requests to the FAA for assignment of the Mode C veil exception petition and clarification of straight-in approach; and

• A presentation of proposed articles on stuck microphones.

Attendance is open to the interested public but will be limited to the space available. The public may present written statements to the subcommittee at any time by providing 30 copies to the Executive Director, or by bringing the copies to him at the meeting. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Washington, DC, on July 16, 1992.

Aaron Boxer,

Executive Director, Air Traffic Subcommittee, Aviation Rulemaking Advisory Committee.

[FR Doc. 92-17273 Filed 7-21-92; 8:45 am]

BILLING CODE 4910-13-M

Aviation Security Advisory Subcommittee Meeting

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of Aviation Security Advisory Subcommittee meeting.

SUMMARY: Notice is hereby given of a meeting of the Threat Analysis and Communications Subcommittee of the Aviation Security Advisory Committee.

DATES: The meeting will be held Tuesday, August 4, 1992, from 9 a.m. to 1 p.m.

ADDRESSES: The meeting will be held in Room 1236 at the Federal Bureau of Investigation (FBI), 10th and Pennsylvania Avenue NW., Washington, DC

FOR FURTHER INFORMATION CONTACT: The Counterterrorism Section, FBI Headquarters, 10th and Pennsylvania Avenue NW., Washington, DC 20535, telephone 202-324-4656.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. app. II), notice is hereby given of a meeting of the Threat Analysis and Communication Subcommittee of the Aviation Security Advisory Committee to be held August 4, 1992, in room 1236, at the Federal Bureau of Investigation, 10th and Pennsylvania Avenue NW., Washington, DC.

The agenda for the meeting will be a discussion of enforcement actions regarding persons detected with firearms at airport security checkpoints. Attendance at the August 4, 1992 meeting is open to the public but limited to space available. Members of the public may address the subcommittee only with the written permission of the chair, which should be arranged in advance. The chair may entertain public comment if, in its judgment, doing so will not disrupt the orderly progress of the meeting and will not be unfair to any other person. Members of the public are welcome to present written material to the subcommittee at anytime.

Persons wishing to present statements or obtain additional information should contact the Counterterrorism Section, FBI Headquarters, 10th and Pennsylvania Avenue NW., Washington, DC 20535, telephone (202) 324-4656.

Issued in Washington, DC on July 16, 1992.

O. K. Steele,

Assistant Administrator for Civil Aviation Security.

[FR Doc. 92-17274 Filed 7-21-92; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

Environmental Impact Statement: New Castle County, Delaware

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for a proposed highway project in New Castle County, Delaware.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Kleinburd, Realty Officer, Delaware Division, 300 S. New St., room 2101, P.O. Box 517, Dover, DE 19901. Telephone (202) 734-2966. Mr. Paul A. Welsh, Location Study Manager, Delaware Department of Transportation, P.O. Box 778, Dover, DE 19903. Telephone (302) 739-4642.

SUPPLEMENTARY INFORMATION: The Federal Highway Administration (FHWA) in cooperation with the Delaware Department of Transportation (DelDOT) will prepare an Environmental Impact Statement (EIS) on a proposal to construct approximately 20 miles of four lane divided, limited access highway in New Castle County, Delaware. The proposed facility will serve an area which is experiencing continuous growth and where extensive development is expected in the immediate and near future. The present transportation system will not be able to handle the already increasing traffic volumes at an acceptable level of service. The study area is generally bounded by the Delaware/Maryland state line on the west, Delaware Route 2 on the north, Route 13 on the east and Middletown, DE to the south. The proposed facility would connect and extend existing Rt. 301 at the Delaware/Maryland line to Delaware's portion of I-95.

Various studies for improved capacity and continuity have been conducted in the past 30 years. These studies considered numerous alternatives, but for various reasons, were never implemented as part of this study. These previous studies will be reviewed and an updated look at possible alignments will be pursued. Alternatives to be considered will include (1) taking no action (No Build), (2) improvements on existing alignment, (3) improvements on new alignment, and (4) a combination of (2) and (3).

A program of public involvement and coordination with Federal, State and Local agencies has been initiated. Both agency and public involvement will continue throughout project development.

To insure that the full range of issues related to this proposed action are addressed and that all significant issues are identified, comments or questions concerning this action and the EIS should be addressed to the FHWA or DelDOT at the addresses provided above.

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research Planning and Construction. The State intergovernmental review contacts established under Executive Order 12372 (former A-95 process) regarding State and local clearinghouse review of Federal and Federally assisted programs and projects apply to this program.

Issued on: July 13, 1992.

John J. Gilbert,

Division Administrator, Dover, Delaware.

[FR Doc. 92-17231 Filed 7-21-92; 8:45 am]

BILLING CODE 4910-22-M

Federal Transit Administration

FTA Sections 3 and 9 Grant Obligations

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice.

SUMMARY: The Department of Transportation and Related Agencies Appropriations Act, 1992, Public Law 102-143, signed into law by President George Bush on October 28, 1991, contained a provision requiring the Federal Transit Administration (FTA) to publish an announcement in the Federal Register every 30 days of grants

obligated pursuant to Sections 3 and 9 of the Federal Transit Act, as amended. The statute requires that the announcement include the grant number, the grant amount, and the transit property receiving each grant. This notice provides the information as required by statute.

FOR FURTHER INFORMATION CONTACT: Janet Lynn Sahaj, Chief, Resource Management and State Programs Division, Office of Capital and Formula Assistance, Department of Transportation, Federal Transit Administration, Office of Grants Management, 400 Seventh Street, SW., room 9305, Washington, DC 20590, (202) 366–2053.

SUPPLEMENTARY INFORMATION: The Section 3 program provides capital assistance to eligible recipients in three categories: Fixed guideway modernization, construction of new fixed guideway systems and extensions, and bus purchases and construction of bus related facilities. The Section 9 program apportions funds on a formula basis to provide capital and operating assistance in urbanized areas. Section 9 grants reported may include flexible funds transferred from the Federal Highway Administration to the FTA for use in transit projects in urbanized areas. These flexible funds are authorized under the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) to be used for highway or transit purposes. Pursuant to the statute FTA reports the following grant information.

Section 3 Grants

Transit property	Grant number	Grant amount	Obligation date
City of Davis, Davis, California	CA-03-0386-00	$3,200,000	06/30/92
Washington Metropolitan Area Transit Authority, Washington, DC-MD-VA	DC-03-0025-00	5,679,000	06/30/92
City of Lincoln, Lincoln, NE	NE-03-0026-00	1,334,813	06/15/92
New York City Department of Transportation, New York, NY—Northeastern NJ	NY-03-0254-00	8,000,000	06/01/92
New York Metropolitan Transportation Authority, New York, NY—Northeastern NJ	NY-03-0274-00	209,835,980	06/01/92
Canton Regional Transit Authority, Canton, OH	OH-03-0116-00	1,575,000	06/05/92
Greater Cleveland Regional Transit Authority, Cleveland, OH	OH-03-0118-00	9,901,633	06/05/92
Pennsylvania Department of Transportation, Pennsylvania	PA-03-0197-01	360,000	06/15/92
Cambria County Transit Authority, Johnstown, PA	PA-03-0221-01	531,88	06/15/92
Berks Area Reading Transportation Authority, Reading, PA	PA-03-0223-01	1,385,192	06/15/92
Area Transportation Authority of North Central Pennsylvania, Johnsonburg, PA	PA-03-0224-00	2,233,440	06/15/92
Pennsylvania State University, State College, PA	PA-03-0226-00	1,500,000	06/08/92
City of El Paso—Sun Metro, El Paso, TX-NM	TX-03-0146-00	1,470,300	06/15/92
Clallam Transit System, Port Angeles, WA	WA-03-0071-00	4,000,000	06/05/92
Washington State Dept. of Trans. Marine Division, Seattle, WA	WA-03-0074-00	2,279,996	06/05/92

Section 9 Grants

Transit property	Grant number	Grant amount	Obligation date
Birmingham-Jefferson County Transit Authority, Birmingham, AL	AL-90-X065-00	$2,802,320	06/19/92
Metroplan, Little Rock-North Little Rock, AR	AR-90-X028-00	90,000	06/30/92
City of Napa, Napa, CA	CA-90-X324-01	138,880	06/23/92
Golden Gate Bridge, Highway and Transportation District, San Francisco-Oakland, CA	CA-90-X469-00	1,457,500	06/25/92
Golden Empire Transit District, Bakersfield, CA	CA-90-X476-00	1,411,727	06/22/92
Sacramento Regional Transit District, Sacramento, CA	CA-90-X479-00	6,530,000	06/22/92
North San Diego County Transit Development Board, San Diego, CA	CA-90-X483-01	1,380,026	06/23/92
Omnitrans, Riverside-San Bernardino, CA	CA-90-X484-00	4,463,100	06/22/92
Metropolitan Transit Development Board, San Diego, CA	CA-90-X486-00	21,393,095	06/09/92
Monterey County, Seaside-Monterey, CA	CA-90-X488-00	96,000	06/22/92
Stockton Metropolitan Transit District, Stockton, CA	CA-90-X-490-00	2,058,863	06/22/92
City of Fairfield, Fairfield, CA	CA-90-X493-01	12,965	06/11/92
City & County of San Francisco, Public Utilities Commission, San Francisco-Oakland, CA	CA-90-X498-00	33,506,443	06/23/92
Santa Cruz Metropolitan Transit District, Santa Cruz, CA	CA-90-X501-00	1,004,302	06/30/92
City of Greeley, Greeley, CO	CO-90-X068-00	705,386	06/22/92
City of Fort Collins, Fort Collins, CO	CO-90-X069-00	656,766	06/23/92
Milford Transit District, Bridgeport-Milford, CT	CT-90-X204-00	790,999	06/30/92
Middletown Transit District, Hartford-Middletown, CT	CT-90-X208-00	200,713	06/30/92
Greater New Haven Transit District, New Haven-Meriden, CT	CT-90-X209-00	1,463,026	06/30/92
Washington Metropolitan Area Transit Authority, Washington, DC-MD-VA	DC-90-X017-01	33,051,000	06/30/92
Tri-County Commuter Rail Authority, Ft. Lauderdale-Hollywood-Pompano Bch, FL	FL-90-X167-00	3,946,674	06/10/92
Escambia Co Bd of Commissioners, Pensacola, FL	FL-90-X170-01	245,444	06/19/92
East Volusia County—East Volusia Transp. Authority, Daytona Beach, FL	FL-90-X180-01	97,856	06/29/92
Broward Co Bd of Co-Commissioners—Broward Co Mass Transit Division, Ft. Lauderdale-Hollywood-Pompano Bch, FL.	FL-90-X183-01	1,760,000	06/29/92
Hillsborough Area Regional Transit Authority, Tampa-St. Petersburg-Clearwater, FL	FL-90-X189-01	1,661,000	06/29/92
Escambia Co Bd of Commissioners, Pensacola, FL	FL-90-X192-00	1,153,940	06/29/92
Brevard County Commissioners—Space Coast Area Transit, Melbourne-Palm Bay, FL	FL-90-X193-00	2,441,004	06/29/92
Palm Beach Co Bd of Commissioners—Palm Beach Co Transit Authority, West Palm Bch-Boca Raton-Delray Bch, FL.	FL-90-X194-00	3,277,982	06/29/92
Tri-County Commuter Rail Authority, West Palm Bch-Boca Raton-Delray Bch, FL	FL-90-X195-00	4,499,429	06/29/92
Naples Metropolitan Planning Organization, Naples, FL	FL-90-X196-00	75,000	06/19/92
Manatee County Board of County Commissioners, Sarasota-Bradenton, FL	FL-90-X197-00	1,538,220	06/19/92
City of Augusta, Augusta, GA-SC	GA-90-X051-01	99,190	06/29/92
City of Augusta, Augusta, GA-SC	GA-90-X064-01	42,257	06/29/92
Metropolitan Atlanta Rapid Transit Authority, Atlanta, GA	GA-90-X067-01	2,670,715	06/29/92
Douglas County, Atlanta, GA	GA-90-X068-00	261,812	06/19/92

SECTION 9 GRANTS—Continued

Transit property	Grant number	Grant amount	Obligation date
Consolidated Government of Columbus, Columbus, GA–AL	GA–90–X070–00	1,536,965	06/19/92
Des Moines Metropolitan Transit Authority, Des Moines, IA	IA–90–X138–00	135,672	06/30/92
Loves Park Transit System (LPTS), Rockford, IL	IL–90–X199–00	189,037	06/24/92
City of Kankakee, Kankakee, IL	IL–90–X200–00	22,750	06/19/92
Greater Peoria Mass Transit District, Peoria, IL	IL–90–X202–00	1,208,635	06/24/92
Michiana Area Council of Governments, Indiana	IN–90–X157–01	121,259	06/24/92
Northwestern Indiana Regional Planning Commission, Northwestern IN–Chicago, IL	IN–90–X169–00	1,682,848	06/25/92
Topeka Metropolitan Transit Authority, Topeka, KS	KS–90–X054–00	1,177,000	06/30/92
City of Owensboro, Owensboro, KY	KY–90–X061–00	361,000	06/29/92
City of Henderson Transit, Evansville, IN–KY	KY–90–X062–00	274,275	06/19/92
Transit Authority of Lexington-Fayette Urban County Govt., Lexington-Fayette, KY	KY–90–X063–00	1,430,334	06/29/92
City of Ashland, Huntington-Ashland, KY–OH–WV	KY–90–X064–00	500,503	06/29/92
Regional Planning Commission, New Orleans, LA	LA–90–X129–00	350,000	06/30/92
Regional Planning Commission, Louisiana	LA–90–X130–00	126,000	06/30/92
City of Monroe, Monroe, LA	LA–90–X131–00	1,749,463	06/30/92
St. Bernard Parish, New Orleans, LA	LA–90–X132–00	204,600	06/30/92
Crescent City Connection Division, Louisiana	LA–90–X133–00	893,401	06/30/92
Southeastern Regional Transit Authority, New Bedford, MA	MA–90–X133–01	40,000	06/30/92
Cape Cod Regional Transit Authority, Hyannis, MA	MA–90–X139–00	300,000	06/30/92
Lowell Regional Transit Authority, Lowell, MA–NH	MA–90–X140–00	155,600	06/30/92
Mass Transit Administration, Baltimore, MD	MD–90–X047–01	4,369,750	06/23/92
State Railroad Administration, Baltimore, MD	MD–90–X048–00	1,316,201	06/17/92
State Railroad Administration, Baltimore MD	MD–90–X049–00	6,222,067	06/30/92
Mass Transit Administration, Baltimore, MD	MD–90–X050–00	1,238,605	06/26/92
Battle Creek Transit System, Battle Creek, MI	MI–90–X154–01	61,573	06/25/92
Bay County Metropolitan Transportation Authority, Bay City, MI	MI–90–X159–00	542,920	06/24/92
County of Muskegon, Michigan	MI–90–X160–00	1,665,639	06/19/92
Flint Mass Transportation Authority, Flint, MI	MI–90–X161–00	2,041,022	06/26/92
City of Saginaw, Saginaw, MI	MI–90–X162–00	897,512	06/24/92
City of Rochester, Rochester, MN	MN–90–X060–00	627,469	06/19/92
City of Columbia Department of Public Works, Columbia, MT	MO–90–X083–00	357,242	06/30/92
Great Falls Transit District, Great Falls, MI	MI–90–X032–00	506,218	06/22/92
City of Winston-Salem, Winston-Salem, NC	NC–90–X101–03	336,740	06/29/92
City of High Point, High Point, NC	NC–90–X136–00	443,012	06/19/92
City of Hickory, Hickory, NC	NC–90–X138–00	244,033	06/19/92
City of Durham, Durham, NC	NC–90–X139–00	688,951	06/19/92
City of Fayetteville, Fayetteville, NC	NC–90–X142–00	1,346,720	06/19/92
City of Fargo, Fargo-Moorhead, ND–MN	ND–90–X026–00	677,850	06/22/92
Omaha Metro Area Transit, Omaha, NE–IA	NE–90–X031–00	1,245,600	06/30/92
Cooperative Alliance for Seacoast Transportation, Portsmouth-Dover-Rochester, NH–ME	NH–90–X030–00	24,838	06/30/92
Manchester Transit Authority, Manchester, NH	NH–90–X031–00	588,412	06/30/92
City of Santa Fe, Santa Fe, NM	NM–90–X033–00	639,062	06/30/92
Onondaga County Civic Center, Syracuse, NY	NY–90–X166–01	166,227	06/19/92
Chemung County Transit System, Elmira, NY	NY–90–X223–00	584,432	06/26/92
New York City Department of Transportation, New York, NY—Northeastern NJ	NY–90–X224–00	17,553,168	06/19/92
City of Poughkeepsie, Poughkeepsie, NY	NY–90–X225–00	294,000	06/26/92
Greater Glens Falls Transit System, Glens Falls, NY	NY–90–X226–00	48,000	06/26/92
Westchester County Department of Transportation, New York, NY—Northeastern NJ	NY–90–X228–00	4,992,172	06/26/92
Dutchess County, Poughkeepsie, NY	NY–90–X229–00	509,000	06/19/92
Central New York Regional Transportation Authority, Syracuse, NY	NY–90–X230–00	1,869,600	06/19/92
Nassau County, New York, NY—Northeastern NJ	NY–90–X231–00	4,854,219	06/19/92
Greater Cleveland Regional Transit Authority, Cleveland, OH	OH–90–X166–00	16,101,106	06/19/92
Central Oklahoma Transportation and Parking Authority, Oklahoma City, OK	OK–90–X040–00	3,890,964	06/30/92
Tri-County Metropolitan Transportation District of Oregon, Portland-Vancouver, OR–WA	OR–90–X041–00	4,955,482	06/25/92
Mid Mon Valley Transit Authority, Monessen, PA	PA–90–X232–00	399,580	06/29/92
Berks Area Reading Transportation Authority, Reading, PA	PA–90–X233–00	1,583,860	06/30/92
Southeastern Pennsylvania Transportation Authority, Philadelphia, PA–NJ	PA–90–X234–00	33,546,420	06/30/92
Lehigh and Northampton Transportation Authority, Allentown-Bethlehem-Easton, PA–NJ	PA–90–X235–00	2,717,280	06/29/92
City of Williamsport, Bureau of Transportation, Williamsport, PA	PA–90–X236–00	461,836	06/30/92
York County Transportation Authority, York, PA	PA–90–X237–00	1,077,757	06/26/92
Red Rose Transit Authority, Lancaster, PA	PA–90–X238–00	1,305,025	06/29/92
Erie Metropolitan Transit Authority, Erie, PA	PA–90–X239–00	1,060,000	06/30/92
Transportation and Motor Blues for Public Use Authority, Altoona, PA	PA–90–X240–00	597,516	06/30/92
Municipality of Vega Baja, Vega Baja-Manati, PR	PR–90–X024–03	295,520	06/29/92
Municipality of Ponce, Ponce, PR	PR–90–X060–01	954,200	06/29/92
Municipality of Arecibo, Arecibo, PR	PR–90–X069–00	200,00	06/29/92
City of San Juan, San Juan, PR	PR–90–X070–00	1,080,000	06/29/92
Pee Dee Regional Transit Authority, Florence, SC	SC–90–X050–00	278,163	06/19/92
City of Anderson, Anderson, SC	SC–90–X051–00	357,200	06/19/92
Aiken County, Augusta, GA–SC	SC–90–X052–00	113,904	06/19/92
City of Charleston, Charleston, SC	SC–90–X053–00	1,680,002	06/19/92
Santee Wateree Regional Transportation Authority, Sumter, SC	SC–90–X055–00	320,843	06/19/92
Coastal Rapid Public Transit Authority, Myrtle Beach, SC	SC–90–X056–00	289,368	06/19/92
Central Midlands Regional Planning Council, Columbia, SC	SC–90–X057–00	1,090,583	06/19/92
City of Rapid City, Rapid City, SD	SD–90–X020–01	38,760	06/22/92
City of Johnson City, Johnson City, TN	TN–90–X102–00	365,000	06/19/92
City of Clarksville, Clarksville, TN–KY	TN–90–X103–00	383,978	06/19/92
City of Dallas, Dallas-Ft Worth, TX	TX–90–X214–00	200,000	06/02/92
City of Lubbock, Lubbock, TX	TX–90–X243–00	1,692,400	06/30/92

SECTION 9 GRANTS—Continued

Transit property	Grant number	Grant amount	Obligation date
City of Lewisville, Texas	TX-90-X244-00	147,000	06/30/92
City of Denton, Texas	TX-90-X246-00	393,918	06/30/92
Utah Transit Authority, Salt Lake City, UT	UT-90-X016-00	12,889,971	06/02/92
Greater Roanoke Transit Company, Roanoke, VA	VA-90-X092-00	1,053,663	06/17/92
Greater Lynchburg Transit Company, Lynchburg, VA	VA-90-X093-00	1,342,864	06/26/92
Jaunt, Inc, Charlottesville, VA	VA-90-X094-00	127,497	06/17/92
Peninsula Transportation District Commission, Newport News-Hampton, VA	VA-90-X095-00	164,000	06/23/92
Clark County Public Transportation Benefit Area, Portland-Vancouver, OR-WA	WA-90-X129-00	304,000	06/25/92
City of Sheboygan, Sheboygan, WI	WI-90-X156-01	72,800	06/19/92
City of La Crosse Planning Department (LAPC), La Crosse, WI-MN	WI-90-X163-00	491,260	06/30/92
City of Superior, Duluth, WI-MN	WI-90-X164-00	158,392	06/19/92
City of Racine, Racine, WI	WI-90-X165-00	907,228	06/19/92
City of Green Bay Transit System, Green Bay, WI	WI-90-X166-00	817,673	06/24/92
City of Waukesha, Milwaukee, WI	WI-90-X167-00	383,353	06/19/92
Milwaukee County Transit System, Milwaukee, WI	WI-90-X168-00	12,018,430	06/24/92
City of Chippewa Falls, Wisconsin	WI-90-X169-00	75,175	06/24/92
Tri-State Transit Authority, Huntington-Ashland, WV-KY-OH	WV-90-X048-00	585,354	06/17/92
Mid-Ohio Valley Transit Authority, Parkersburg, WV-OH	WV-90-X049-00	385,009	06/17/92
City of Cheyenne, Cheyenne, WY	WY-90-X011-00	337,740,	06/23/92

Issued on: July 16, 1992.

Brian W. Clymer,

Administrator.

[FR Doc. 92-17213 Filed 7-21-92; 8:45 am]

BILLING CODE 4910-57-M

DEPARTMENT OF THE TREASURY

[Number: 27-01]

Organization and Functions—Office of the Assistant Secretary (Management)/Chief Financial Officer

July 9, 1992.

1. *Purpose.* This directive describes the organization of the Office of the Assistant Secretary (Management)/ Chief Financial Officer (CFO).

2. *The Assistant Secretary (Management)/CFO.* The following are the functions of the Assistant Secretary (Management)/CFO.

a. Serves as the CFO of the Department of the Treasury, with authorities and functions pursuant to the Chief Financial Officers Act of 1990, Public Law 101-576 ("the Act"), and, as CFO, is responsible for carrying out the following functions for the Department and all bureaus (described as Departmentwide in this directive):

(1) Overseeing Departmentwide financial management, accounting policy, internal controls, cash management, credit management debt management, coordination of responses to General Accounting Office (GAO) activities relating to financial management, and corrective actions related to audit recommendations;

(2) Specifying the format, content and frequency of financial reports and statements, including overseeing the development of performance measurement indicators prepared by bureau program and financial components;

(3) Reviewing and approving the development, implementation, and maintenance of an integrated agency, as well as bureau financial management system(s), as defined by Office of Management and Budget (OMB) Circular No. A-127, paragraph 4.d., dated December 19, 1984, in compliance with generally accepted accounting principles, standards, and requirements for all Departmentwide administrative and program areas;

(4) Reviewing and approving financial statements and reports prepared at the bureau or Departmental level prior to submission to external parties after approval by the Secretary;

(5) Preparing and transmitting to the Secretary and OMB an annual report which includes items specified in 31 U.S.C. 902(a)(6) and cited below:

(a) A description and analysis of the status of financial management, Departmentwide;

(b) The annual financial statements prepared and audited reports pursuant to the Act;

(c) A summary of the Federal Managers' Financial Integrity Act (FMFIA) Report; and

(d) Any other information that warrants communication to the President and Congress concerning Departmentwide financial management;

(6) Developing and managing the Department of the Treasury budget for the Secretary and Deputy Secretary, monitoring financial execution of the budget, and ensuring the issuance of timely performance reports to management officials;

(7) Directing the biennial review of fees, royalties, rents and other charges imposed by the Department or a bureau, and making recommendations for changes;

(8) Reviewing, in accordance with the procedures established in Treasury Directive (TD) 28-02, "Legislative Procedures," all legislative items related to or concerning financial management matters subject to review and coordination pursuant to TD 28-02, to provide advice and comments on financial management issues, including costs and benefits;

(9) Providing direction and policy guidance to program managers on financial management matters;

(10) Developing Departmentwide policies and providing oversight related to qualifications, recruitment, training, selection and retention of financial management personnel; and

(11) Assuming any other function conferred upon the CFO by statute, Governmentwide regulation, or Treasury Orders or Directives.

b. Serves as the principal policy adviser to the Secretary and Deputy Secretary on matters involving the internal management of the Department and its bureaus. The Assistant Secretary oversees the Department's management programs, which include: personnel and training; affirmative action and equal employment opportunity; security; property management, procurement and contracting; planning and management analysis; and program reviews of legislative proposals in accordance with TD 28-02, to provide advice to the Secretary on cost and benefit estimates.

c. Oversees bureau proposals related to the development of budgetary resources for information systems.

d. Provides comprehensive administrative services to Departmental

Offices and other components of the Department, as appropriate.

3. *Organization Structure.* The Assistant Secretary (Management)/CFO is assisted in carrying out Departmentwide functions by three Deputy Assistant Secretaries: (a) Departmental Finance and Management; (b) Information Systems; and (c) Administration. In addition, assistance is provided in performing these functions by the Director, Office of Security, and the Deputy CFO. An organization chart is attached.

4. *The Deputy Assistant Secretary (Departmental Finance and Management)* has Departmentwide responsibility for personnel policies; the Treasury Executive Institute; equal opportunity programs; Treasury integrated management information systems, including automated payroll/personnel systems; procurement program management; management support systems; budget formulation; planning policy and management analysis; program evaluation; and productivity and management improvement. The Deputy Assistant Secretary supports the Assistant Secretary (Management)/CFO on legislative matters, and supervises the Financial Services Directorate, the Human Resources Directorate, and the Management Programs Directorate, with the exception of CFO-related responsibilities.

a. *Financial Services Directorate.* The Director serves as the Deputy CFO and reports directly to the Assistant Secretary (Management)/CFO on financial management matters. The Directorate is composed of the Office of Budget, the Office of Accounting and Internal Control, the Office of Financial Systems and Reports, and the Office of Planning and Management Analysis.

(1) *The Office of Budget* analyzes bureau resource requests and completes financial analyses related to resource allocations; monitors financial execution of the budget and administers Departmentwide budget controls; and represents the Department on budget matters in contacts with OMB, congressional committees and other Government agencies.

(2) *The Office of Accounting and Internal Control* develops, implements and evaluates Departmentwide accounting policy; oversees Departmentwide compliance with the FMFIA and Prompt Payment Act and the application of internal controls by bureau staffs; reviews and evaluates Departmentwide administrative and program accounting systems; coordinates cash and credit management/debt collection programs for treasury bureaus; monitors the resolution and implementation of audit findings and recommendations; and provides centralized coordination and monitoring of all Treasury related GAO audit activities.

(3) *The Office of Financial Systems and Reports* Recommends Departmentwide financial management and revenue systems policies and standards; reviews Departmentwide financial reports and financial statements; provides technical advice to bureaus on financial and revenue systems design and implementation; reviews and provides advice related to financial system proposals made by bureaus under TD 32–02, "Approval of Financial Management/Accounting Systems;" ensures that the Inventory, Tracking and Closure System is operational and supports needs of Departmental offices and policy officials; and codifies the process for financial systems review and documentation at the Department level.

(4) *The Office of Planning and Management Analysis* supports Departmental management through the application of planning and management analysis techniques and maintains the Departmental planning process; develops management and productivity improvement plans and oversees the development of performance indicators used in financial statements; conducts studies of issues with long-term or strategic impact on Treasury operations and conducts analyses to improve Departmentwide operations and the allocation of resources by the Departmentwide budget process; and supports the Assistant Secretary (Management)/CFO on matters relating to legislation, as provided in paragraphs 2.a.(8). and 2.b., and the President's Council on Management Improvement.

b. *Human Resources Directorate.* The directorate is composed of the Office of Personnel Policy, the Treasury Executive Institute, the Office of the Treasury Integrated Management Information Systems, and the Office of Equal Opportunity Program.

(1) *The Office of Personnel Policy* provides leadership in developing Departmentwide personnel policies and procedures; develops, recommends and implements functional personnel programs such as: Employment and staffing, including the Senior Executive Service (SES) and the disabled; classification and compensation; employee development, appraisal, recognition and benefits; employee and labor relations; drug-free workplace, including drug testing; occupational safety and health; and controls and evaluates personnel management activities, Departmentwide.

(2) *The Treasury Executive Institute* provides developmental services to SES executives and candidates to support achievement of their organizational and individual goals; presents programs, seminars and workshops with broad applicability to executive level personnel; sponsors and carries out, at the request of the Treasury Career Advisory Panel, several special activities each year, such as an Awards Ceremony to recognize the Department's Presidential Rank Award recipients.

(3) *The Office of Treasury Integrated Management Information Systems (TIMIS)* converts all Treasury bureaus from existing payroll/personnel systems to the U.S. Department of Agriculture system while simultaneously managing, operating and maintaining the system for converted bureaus; develops, conducts and maintains a full curriculum of technical training for Treasury bureau payroll/personnel staff; provides continuing user support, including user assistance in problem resolution and Departmentwide reporting; and ensures that the system meets the technical requirements of the Treasury community through the identification and development of system requirements and the negotiation of system modifications.

(4) *The Office of Equal Opportunity Program* provides for the consideration and disposition of complaints involving issues of discrimination on grounds of race, color, religion, sex, national origin, age and handicap; oversees, evaluates, and sets standards for the operation of the Regional Complaints Centers through which all Treasury bureaus process their complaints of discrimination; directs and administers Departmentwide affirmative employment and special emphasis programs, such as the Hispanic Employment Program, the Federal Women's Program, and the Historically Black Colleges and Universities Program.

c. *Management Programs Directorate.* The Directorate is composed of the Office of Procurement, the Office of Management Support Systems, and the Office of Automated Payroll/Personnel Systems.

(1) *The Office of Procurement* provides policy and technical guidance for the Departmentwide procurement and contracting programs and reviews and evaluates bureau procurement operations; oversees the activities of the Assistant Director (Small and Disadvantaged Business Utilization), in support of the Assistant Secretary

(Management)/CFO, (who is the statutory director of the Office of Small and Disadvantaged Business Utilization under Public Law 95–507); oversees the activities of the Departmental Advocate for Competition appointed under Public Law 98–369; and administers a Departmentwide career management program for all procurement personnel in accordance with requirements of Public Law 98–191.

(2) *The Office of Management Support Systems* provides policy and technical guidance for Departmentwide space management, real and personal property, fleet management, transportation management, energy conservation, environmental quality and pollution abatement, historic preservation, metrication, and recycling programs; publishes Treasury Orders and Directives; provides policy direction and oversight of the Treasury travel management, advisory committee management, and audiovisual management programs; and reviews and evaluates bureau operations within these program areas.

(3) *The Office of Automated Payroll/Personnel Systems* has responsibility for complete administrative management and oversight of records, contracts, facility, personnel, and equipment closeout of the former Treasury Payroll Information System (TPIS) and Personnel Management Information Telecommunications System (PERMITS) payroll and personnel systems and staff.

5. *The Deputy Assistant Secretary (Information Systems)* serves as the Department's Senior Official for Information Resources Management and has Departmentwide responsibility for policy, oversight and improvement of information systems, including computer hardware and software, telecommunications (voice, data and radio), office automation, and storage and imaging technologies. The Deputy Assistant Secretary supervises the Office of Information Resources Management and the Office of Telecommunications Management.

a. *The Office of Information Resources Management* manages a broad range of information resources management functions specified in the Brooks Act and the Paperwork Reduction Act, except for management issues related to telecommunications; coordinates and makes recommendations for information systems planning and budgeting; develops and coordinates policy and standards; approves and coordinates acquisitions and systems management; conducts information management reviews; administers provisions of the Computer Security Act; conducts inventories of bureau sensitive systems and reviews security plans; develops and reviews computer security awareness training guidelines; and reviews and approves public reporting requirements; and coordinates Treasury external directories, forms, reports, records, and mail management program activities.

b. *The Office of Telecommunications Management* develops and manages the Departmentwide telecommunications program for local and wide area communications systems and services; develops policies for cost-effective utilization of telecommunications resources by Treasury bureaus; reviews and coordinates the acquisition of communications systems and services throughout the Department; establishes and oversees program offices for voice, data, video, and radio communications to meet Departmentwide requirements.

6. *The Deputy Assistant Secretary (Administration)* has responsibility for the Departmental Offices' administrative and management operating programs which include: administrative services; automated systems; facilities; budget formulation and execution; accounting and internal controls; personnel, payroll, and equal employment opportunity; printing and graphics; and procurement. The Deputy Assistant Secretary (Administration) is responsible for managing the Department's disclosure services program, Working Capital Fund, printing program and reimburseable agreement operations which cross bureau lines. The Deputy Assistant Secretary (Administration) also serves as the Departmental Offices' liaison for activities required to comply with the CFO Act. Unless another Treasury Order, Directive, or delegation specifically states otherwise with respect to a function, the Deputy Assistant Secretary (Administration) is the head of the Departmental Offices for all administrative and management functions. The Deputy Assistant Secretary supervises the Administrative Operations, Automated Systems, Facilities Management, Financial Management, Personnel Resources, Printing and Graphics, and Procurement Services Divisions.

a. *The Administrative Operations Division* provides a range of administrative support services to the Departmental Offices to include library, mail, messenger and motor pool, telephone and switchboard, travel and special events support, personal property and representation funds accounting and building security, safety and parking. The Division manages the Department's disclosure services program.

b. *The Automated Systems Division* provides office automation, data processing, user support, applications development and telecommunications services to the Departmental Offices and users outside the Departmental Offices, as appropriate.

c. *The Facilities Management Division* directs and coordinates the management of the Main Treasury Building, Treasury Annex, and related grounds, including space management, construction, maintenance, and custodial care.

d. *The Financial Management Division* formulates, presents, executes and manages the Departmental Offices' budget; maintains a comprehensive integrated financial management and accounting system in support of the financial resources under the jurisdiction of the Departmental Offices; develops and directs the internal controls activities of the Departmental Offices; and supports the Deputy Assistant Secretary (Administration) in providing information to comply with the CFO Act. In addition, the Division provides financial management for the Department's Working Capital Fund and reimbursable programs which cross bureau lines.

e. *The Personnel Resources Division* formulates and administers the operating personnel management and training programs for the Departmental Offices, including the Equal Employment Opportunity Discrimination Complaint Program and the Multi-Year Affirmative Action Plan Program, and provides payroll liaison services for Departmental Office employees.

f. *The Printing and Graphics Division* provides Departmentwide printing, graphics and printing procurement services; develops the Department's publications policy; and represents the Department before and on inter- and intragovernmental printing committees and boards.

g. *The Procurement Services Division* provides operational procurement support for the Departmental Offices and manages certain Departmentwide procurements.

7. *The Office of Security* develops and administers Departmentwide policies and programs for personnel security and physical security, including industrial security and information security, emergency preparedness, Departmental Offices personnel security, and systems security programs. The latter program encompasses computer security programs, telecommunications security, operations security (threat/vulnerability

assessments), emissions security (TEMPEST), and electronic authentication; and contacts and performs liaison with other Government agencies to fulfill program responsibilities.

8. *Cancellation.* TD 27-01, "Organization and Functions—Office of the Assistant Secretary of the Treasury (Management)," dated March 23, 1989, is superseded.

9. *Office of Primary Interest.* Office of the Assistant Secretary (Management)/CFO.

David M. Nummy,

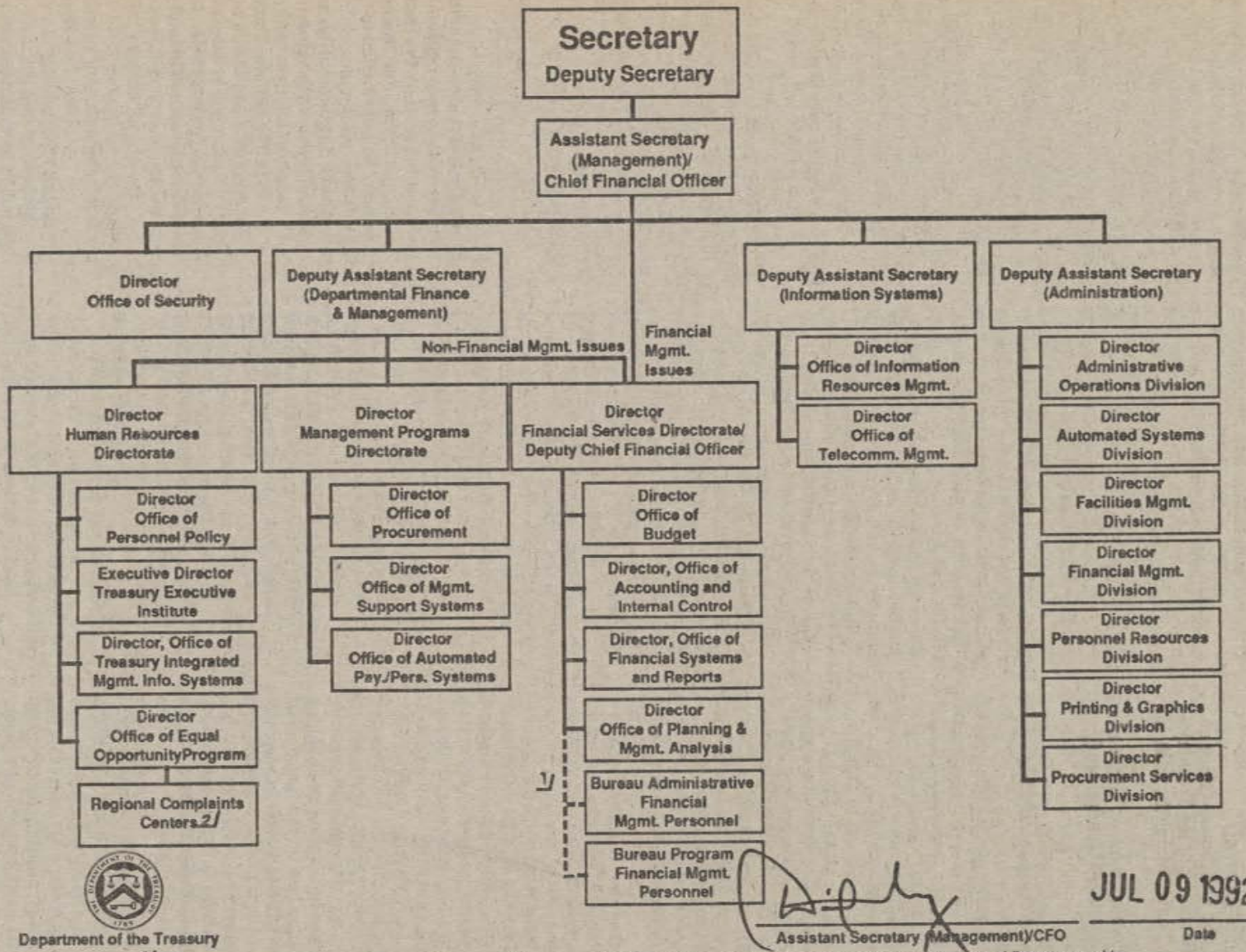
Assistant Secretary (Management)/Chief Financial Officer.

Attachment

BILLING CODE 4810-25-M

Attachment

Office of Management



Department of the Treasury

JUL 09 1992

Assistant Secretary (Management)/CFO — Date

1/ The dotted line delineates the Assistant Secretary (Management)/CFO role in financial management and the development of Departmentwide policies related to qualifications, recruitment, training, selection, and retention of bureau financial management personnel.

2/ Regional Complaints Centers are located in Washington, DC, Dallas, Chicago, and San Francisco.

[FR Doc. 92-17208 Filed 7-21-92; 8:45 am]
BILLING CODE 4810-25-C

[Number: 19-05]

Designation of Financial Institutions as Depositaries of Public Money for United States Mint Coin Consignment Programs

July 8, 1992.

1. *Delegation.* By virtue of the authority delegated by the Secretary of the Treasury in Treasury Order (TO) 101-18, "Delegation of Authority to the Treasurer of the United States to Designate Financial Institutions as Depositaries of Public Money for United States Mint Consignment Programs," I hereby redelegate to the Director, United States Mint, authority to establish depositary accounts with financial institutions and to designate financial agents, only as are necessary to support United States Mint coin consignment programs.

2. *Redelegation.* The Director, United States Mint, is authorized to designate representatives to sign consignment agreements with depositary financial institutions on behalf of that official.

3. *Authority.* TO 101-18, "Delegation of Authority to the Treasurer of the United States to Designate Financial Institutions as Depositaries of Public Money for United States Mint Consignment Programs," dated August 5, 1987.

4. *Cancellation.* Treasury Directive 19-05, "Designation of Financial Institutions as Depositaries of Public Money for United States Coin Consignment Programs," dated August 6, 1987, is superseded.

5. *Office of Primary Interest.* Office of the Treasurer of the United States.

Catalina V. Villalpando,

Treasurer of the United States.

[FR Doc. 92-17209 Filed 7-21-92; 8:45 am]

BILLING CODE 4810-25-M

[Number: 101-05]

Reporting Relationships and Supervision of Officials, Offices and Bureaus, Delegation of Certain Authority, and Order of Succession in the Department of the Treasury

July 2, 1992.

By virtue of the authority vested in the Secretary of the Treasury, including the authority vested by 31 U.S.C. 321(b) and Executive Order No. 11822, dated December 10, 1974, it is ordered that:

1. The Deputy Secretary shall report directly to the Secretary.

2. The Assistant Secretary (Policy Management) and Counselor to the Secretary shall report directly to the Secretary, except that with respect to supervision of the Executive Secretariat the Assistant Secretary (Policy Management) and Counselor to the Secretary shall report through the Deputy Secretary to the Secretary.

3. The following officials shall report through the Deputy Secretary to the Secretary and shall exercise supervision over those officers and organizational entities set forth on the attached organizational chart:

Under Secretary (International Affairs)
Under Secretary (Finance)
General Counsel
Assistant Secretary (Enforcement)
Assistant Secretary (Legislative Affairs)
Assistant Secretary (Management)
Assistant Secretary (Public Affairs and Public Liaison)
Assistant Secretary (Tax Policy)
Inspector General
Treasurer of the United States
Comptroller of the Currency
Commissioner of Internal Revenue
Director, Office of Thrift Supervision

4. The Assistant Secretary (Management) serves as the Department's Chief Financial Officer pursuant to the Chief Financial Officers Act of 1990, Public Law 101-576.

5. The Tax Legislative Counsel, the International Tax Counsel and the Benefits Tax Counsel provide counsel directly to the Assistant Secretary (Tax Policy), but are supervised by the General Counsel as part of the Department's Legal Division.

6. The Deputy Secretary is authorized, in that official's own capacity and that official's own title, to perform any functions the Secretary is authorized to perform and shall be responsible for referring to the Secretary any matter on which action would appropriately be taken by the Secretary.

7. The Under Secretaries, the General Counsel, and the Assistant Secretaries are authorized to perform any functions the Secretary is authorized to perform. Each of these officials will ordinarily perform under this authority only functions which arise out of, relate to, or concern the activities or functions of, or the law administered by or relating to, the bureaus, offices, or other organizational units over which the incumbent has supervision. Each of these officials shall perform under this authority in the official's own capacity and the official's own title and shall be responsible for referring to the Secretary any matter on which action would appropriately be taken by the Secretary. Any action heretofore taken by the Deputy Secretary or any of these officials in the incumbent's own title is hereby affirmed and ratified as the action of the Secretary.

8. The following officials shall, in the order of succession indicated, act as Secretary of the Treasury in case of the death, resignation, absence or sickness of the Secretary and other officers succeeding the incumbent, until a successor is appointed, or until the absence or sickness shall cease:

a. Deputy Secretary;

b. The following individuals, in the order of the date on which they were first appointed to a position within the Department requiring appointment by the President by and with the advice and consent of the Senate:

- Under Secretary (International Affairs);
- Under Secretary (Finance); and
- Assistant Secretary (Policy Management) and Counselor to the Secretary;

c. General Counsel; and

d. Assistant Secretaries, appointed by the President with Senate confirmation, in the order designated by the Secretary.

9. Treasury Order 101-05, "Reporting Relationships and Supervision of Official, Offices and Bureaus, Delegation of Certain Authority, and Order of Succession in the Department of the Treasury," dated October 4, 1991, is superseded as of this date. To the extent that any provision of any other Order of the Department is inconsistent with any provision of this Order, the provisions of this Order shall govern.

Nicholas F. Brady,

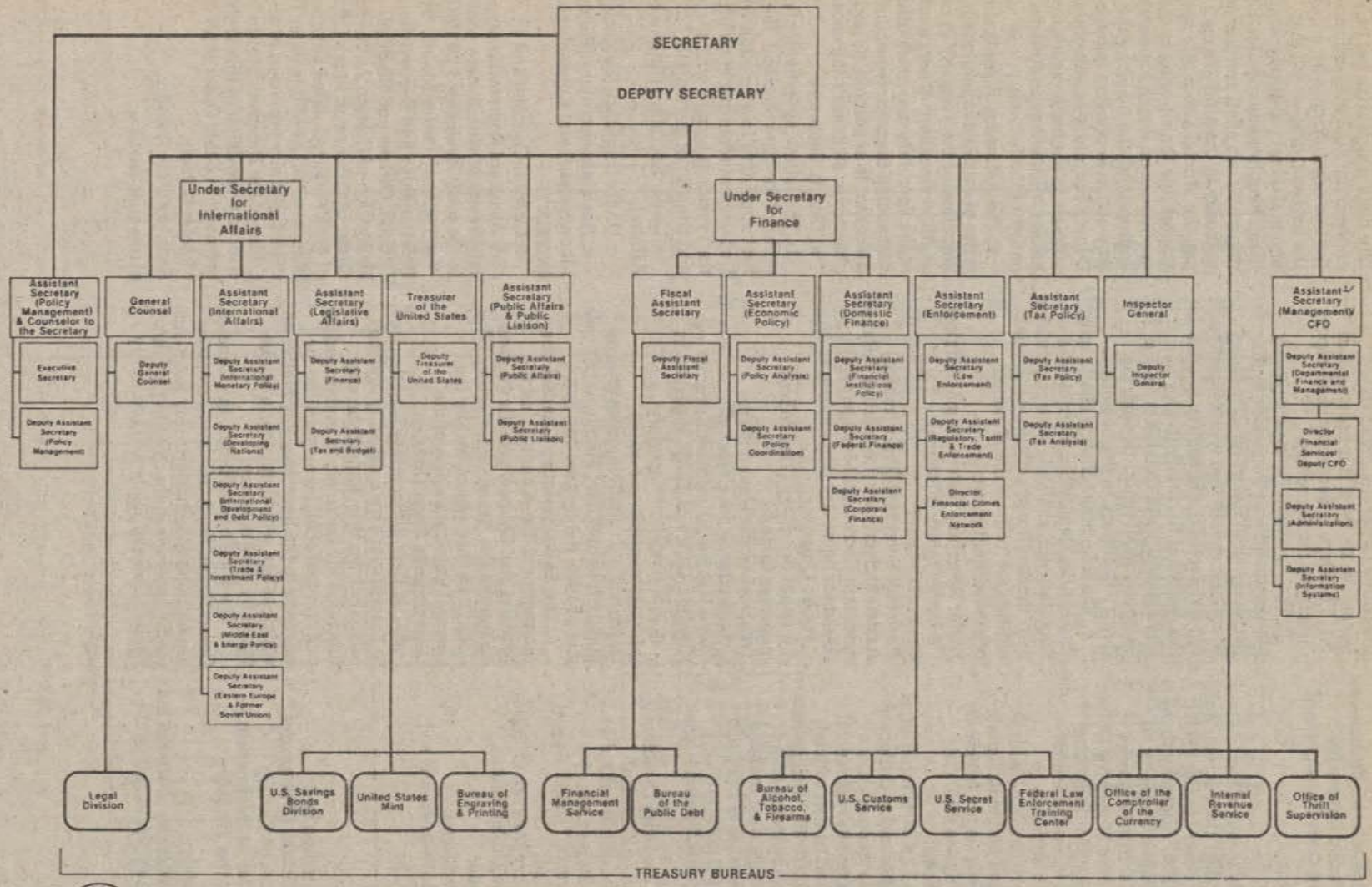
Secretary of the Treasury.

BILLING CODE 4810-25-M

TO 101-05
07-02-92

Attachment

THE DEPARTMENT OF THE TREASURY



✓ Assistant Secretary (Management) is the Chief Financial Officer (CFO).

JUL 2 1992

[FR Doc. 92-17211 Filed 7-21-92; 8:45 am]
BILLING CODE 4810-25-C

[Number: 12-51]

Affixing the Department of the Treasury Seal

June 30, 1992.

1. *Delegation.* This directive authorizes:

a. Heads of bureaus and their deputies, including the Inspector General and deputy, to affix the Seal of the Department of the Treasury to authenticate originals and copies of books, records, papers, writings, and documents of the Department for all purposes, including the purposes authorized by 28 U.S.C. 1733(b);

b. The following officials in the Departmental Offices to affix the Seal of the Department of the Treasury:

(1) Deputy Assistant Secretary (Administration);

(2) Director, Printing and Graphics Division;

(3) Director, Administrative Operations Division; and

(4) Chief, Clerk's Office; and

c. The Deputy Assistant Secretary (Administration), heads of bureaus, and the Inspector General to procure and maintain custody of the dies of the Treasury Department Seal.

2. *Redelegation.* Heads of bureaus and their deputies, including the Inspector General and deputy, may redelegate the authority in paragraph 1.a. to appropriate subordinate officials.

3. *Cancellation.* Treasury Directive 12-51, "Affixing the Department of the Treasury Seal," dated January 29, 1987, is superseded.

4. *Office of Primary Interest.* Administrative Operations Division, Office of the Deputy Assistant Secretary (Administration), Office of the Assistant Secretary (Management).

David M. Nummy,

Assistant Secretary (Management).

[FR Doc. 92-17212 Filed 7-21-92; 8:45 am]

BILLING CODE 4810-25-M

Customs Service

[T.D. 92-70]

Country of Origin Marking for Imported Pipes, Tubes, and Fittings

AGENCY: U.S. Customs Service, Department of The Treasury.

ACTION: Notice revising T.D. 86-15 on the country of origin marking requirements of pipes, tubes, and fittings of iron or steel covered by 19 U.S.C. 1304(c).

SUMMARY: As provided in 19 U.S.C. 1304(c), certain pipe and pipe fittings must be marked by specified methods (die stamping, cast-in-mold lettering, etchings, or engraving). In 1988 Congress amended 19 U.S.C. 1304(c) to permit alternative methods if, because of the nature of an article, it is technically or commercially infeasible to mark by one of the four methods. In such case, paint stencilling or an equally permanent method is permitted. Small diameter pipe, tube, and fittings may be marked by tagging the container or bundles. See 19 U.S.C. 1304(c)(2). This document revises T.D. 86-15, regarding the marking of pipe, tubes, and fittings to conform to 19 U.S.C. 1304(c)(2).

EFFECTIVE DATE: July 22, 1992.

FOR FURTHER INFORMATION CONTACT: Robert Dinerstein, Office of Regulations and Rulings, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229 (202-566-2938).

BACKGROUND: Section 207 of the Trade and Tariff Act of 1984, (Pub. L. 98-573), amended 19 U.S.C. 1304 to require, without exception, that all pipe, tube, and pipe fittings of iron or steel must be marked to indicate the proper country of origin by means of die stamping, cast-in-mold lettering, etching or engraving. 19 U.S.C. 1304(c). However, after the enactment of section 207, it was brought to the attention of Customs that certain pipe and pipe fittings of iron or steel cannot be marked by any of the methods prescribed by the section without rendering such articles unfit for the purpose for which they were intended. Customs solicited comments on this subject, and issued T.D. 86-15 published in the **Federal Register** on February 5, 1986, 51 FR 4559, setting forth certain categories of articles which may be marked by alternative methods. For certain categories of articles, paint stencilling was the requisite method. For other categories, paint stencilling or tagging of the bundles or the containers was permitted. These categories include thin-walled pipes and fittings, small-diameter pipes and fittings, other fittings, line pipe, coated pipes, and spun iron pipe. These categories of articles are described in detail in T.D. 86-15. In addition, for ornamental pipes, tube, and fittings of all types, having a highly polished surface, T.D. 86-15 permits marking by means of a durable tag or sticker securely affixed or marking the protective wrapper.

In 1988 Congress amended 19 U.S.C. 1304(c) to allow for alternative methods of marking only if, because of the nature of an article it is technically or commercially infeasible to mark by one of the four prescribed methods. In such case, the article may be marked *by an equally permanent method of marking such as paint stencilling or in the case of small diameter pipe tube and fittings, by tagging the containers or bundles. (19 U.S.C. 1304(C)(2), emphasis added).*

In enacting 19 U.S.C. 1304(c)(2), Congress overrode Customs determination to allow the country of origin marking of certain types of pipes, tubes, and fittings by tagging of bundles or containers for pipe other than small diameter pipe. As the emphasized language makes clear marking by tagging of bundles is permissible only in the case of small diameter. Pipe, tubes and fittings which cannot be marked by a prescribed method must be marked by "paint stencilling or an equally permanent method." We do not consider tagging the containers or bundles an equally permanent method marking as paint stencilling. Therefore, marking pipe, tube, and fittings by tagging the bundles or containers is only acceptable for small diameter product. In T.D. 86-15, Customs determined that small diameter product included fittings that have a nominal diameter of one-fourth inch or less and pipe with an inner diameter of 1.9 inches or less.

Accordingly, to conform with 19 U.S.C. 1304(c)(2), T.D. 86-15 is amended as follows: Only small diameter pipe, tube, or fittings (fittings with a nominal diameter one-fourth inch or less and pipes with an inner diameter of 1.9 inches or less) may also be marked by tagging the containers or bundles. Other articles listed in T.D. 86-15 must be marked by paint stencilling or an equally permanent method.

For articles not specified in T.D. 86-15, the burden is on the importer to satisfy Customs that it is technically or commercially infeasible to mark the article by one of the four methods designated in 19 U.S.C. 1304. Such articles must be marked by paint stencilling or an equally permanent method.

Customs recognizes that there might be some cases where paint stencilling or an equally permanent method of marking could damage the product and render it unfit for the purpose it was intended. If such a case arises, Customs will consider alternative methods of marking on a case-by-case basis.

Dated: July 15, 1992.

Samuel H. Banks,

Assistant Commissioner, Office of Commercial Operations.

[FR Doc. 92-17201 Filed 7-21-92; 8:45 am]

BILLING CODE 4820-02-M

Sunshine Act Meetings

Federal Register
Vol. 57, No. 141
Wednesday, July 22, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY CREDIT CORPORATION

TIME AND DATE: 2:00 p.m., July 29, 1992.

PLACE: Room 104–A Administration Building, U.S. Department of Agriculture, Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Minutes of Open Meeting of April 16, 1992.
2. Resolution re: Amendment of Commodity Credit Corporation Bylaws.
3. Memorandum re: Update of Commodity Credit Corporation (CCC)-Owned Inventory.
4. Docket re: CZ–152a, Revision 2, Computation of Interest, Application of Collections, and Authority to Disregard Small Amounts.
5. Docket re: CZ–217, Revision 2, Policy on Agreements for Fiscal and Financial Services for the Commodity Credit Corporation.
6. Docket re: CZ–261, Revision 1, Policy on Commodity Credit Corporation Borrowings from the Secretary of the Treasury.
7. Memorandum re: Change in Availability of CCC Stocks for Donation Overseas Under Section 416(b) of the Agricultural Act of 1949 in Fiscal Year 1992.
8. Resolution re: CZ–266, Resolution No. 29, Amendment 2, Ratification of Commodities Available for Public Law 480 During Fiscal Year 1992.
9. Docket re: CX–330, Export Enhancement Program and Similar CCC Export Programs for 1992 and Subsequent Years.

CONTACT PERSON FOR MORE INFORMATION: James V. Hansen, Secretary, Commodity Credit Corporation, Room 3603 South Building, U.S. Department of Agriculture, Post Office Box 2415, Washington, DC 20013; telephone (202) 690–0490.

Dated: July 17, 1992.

James V. Hansen,

Secretary, Commodity Credit Corporation.

[FR Doc. 92–17338 Filed 7–20–92; 12:15 pm]

BILLING CODE 3410–05–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, August 7, 1992.

PLACE: 2033 K St., N.W., Washington, D.C., 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 92–17406 Filed 7–20–92; 3:48 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, August 14, 1992.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 92–17407 Filed 7–20–92; 3:48 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, August 21, 1992.

PLACE: 2033 K St., N.W., Washington, D.C., 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 92–17408 Filed 7–20–92; 3:48 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, August 28, 1992.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 92–17409 Filed 7–20–92; 3:48 pm]

BILLING CODE 6351–01–M

UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS

Notice of a Meeting

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (39 C.F.R. Section 7.5) and the Government in the Sunshine Act (5 U.S.C. Section 552b), hereby gives notice that it intends to hold a meeting at 8:30 a.m. on Tuesday, August 4, 1992, in San Francisco, California. The meeting is open to the public and will be held at the General Mail Facility, 1300 Evans Avenue, in Room 332. The Board expects to discuss the matters stated in the agenda which is set forth below. Requests for information about the meeting should be addressed to the Secretary of the Board, David F. Harris, at (202) 268–4800.

There will also be a session of the Board on Monday, August 3, 1992, but it will consist entirely of briefings and is not open to the public.

Agenda

Tuesday Session

August 4–8:30 a.m. (Open)

1. Minutes of Previous Meeting, July 6–7, 1992.
2. Remarks of the Postmaster General. (Marvin Runyon.)
3. Quarterly Report on Financial Performance. (Comer S. Coppie, Senior Assistant Postmaster General, Finance Group.)
4. Strategic Plan Update. (Frank R. Power, Assistant Postmaster General, Planning Department.)
5. Report on the San Francisco Division. (James W. Larsen, Field Division General Manager/Postmaster.)
6. Tentative Agenda for the August 31–September 1, 1992, meeting in Washington, D.C.

David F. Harris,

Secretary.

[FR Doc. 92–17398 Filed 7–20–92; 3:15 pm]

BILLING CODE 7710–12–M

federal register

Wednesday
July 22, 1992

Part II

Department of Transportation

Coast Guard

46 CFR Part 174

Subdivision and Damage Stability of Dry Cargo Vessels; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 174

[CGD 87-094]

RIN 2115-AC87

Subdivision and Damage Stability of Dry Cargo Vessels

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes regulations requiring new dry cargo ships of 500 gross tons or more, calculated in accordance with the International Convention on Tonnage Measurement of Ships, 1969, to meet a minimum standard of subdivision and damage stability. These proposed regulations will implement an international standard that was developed to ensure that ships can sustain limited damage without loss of that ship.

DATES: Comments must be received on or before September 8, 1992.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G-LRA/3406) (CGD 87-094), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001, or may be delivered to room 3406 at the above address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267-1477.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters.

FOR FURTHER INFORMATION CONTACT: LCDR Guy R. Nolan, Office of Marine Safety, Security, and Environmental Protection (G-MTH-3/13), room 1308, U.S. Coast Guard Headquarters, Washington, DC 20593-0001, (202) 267-2988.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking as (CGD 87-094) and the specific sections of this proposal to which their comments apply, and give reasons for the comments. Persons wanting acknowledgment of receipt of comments should enclose a stamped self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Marine Safety Council at the address under **ADDRESSES.** If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register.**

Drafting Information

The principal persons involved in the drafting of this document are LCDR Guy R. Nolan, Project Manager, Office of Marine Safety, Security, and Environmental Protection, and Helen Boutrous, Project Counsel, Office of Chief Counsel.

Background and Purpose

A. Regulatory History

On April 6, 1988, the Coast Guard published an Advance Notice of Proposed Rulemaking (ANPRM) entitled "Dry Cargo Ship Subdivision and Damage Stability Regulations" in the **Federal Register** (53 FR 11440). The ANPRM provided draft regulations, that were based on an IMO resolution, for public comment. On November 6, 1989, the Coast Guard published a revision to the draft regulations in the **Federal Register** (54 FR 46631). This revision incorporated a revision in the international standard, and reopened the comment period to January 5, 1990. The Coast Guard received a total of fourteen comments to the ANPRM's. A public hearing was not requested and one was not held.

B. Introduction

Subdivision is the partitioning of a ship's internal volume into watertight compartments. Its purpose is to limit the quantity of water which may enter the ship following accidental hull damage or internal piping failure. Damage stability is the ability of a ship to avoid capsizing following accidental flooding. If uncontrolled flooding occurs without adequate subdivision and damage stability, the loss of the ship is virtually certain. Many disasters could possibly have been avoided if the ships had been subdivided and many others did not become disasters because the ships were subdivided. Casualties which result in capsizing or sinking typically involve loss of life, loss of the ship and its cargo, and release of quantities of oil and toxic chemicals into the environment. Casualty statistics presented in the April 6, 1988, ANPRM demonstrate that dry cargo ships with little subdivision have a higher rate of total losses following a collision than similar ships having the degree of subdivision in their cargo holds which the proposed regulation would require. Loss of life and property can be reduced if adequate subdivision and damage stability is provided in the design of all dry cargo ships.

Roughly 100 million dollars may be spent to build a ship which will take to sea a crew of up to thirty, and will carry 50 to 100 million dollars in goods as cargo, but could sink if even a single small opening is made in the hull below the waterline. Although the ship and the cargo may be insured, there can be no justification for the lives lost, the huge sums spent on inquiries and litigation, the pollution of the environment, the interruption of vital transportation services, the disruption of regular port activities, and all their associated costs to society. In most cases, well-placed, watertight bulkheads can substantially reduce these effects because the ship would not be lost.

Flooding may be caused by a wide variety of circumstances. This proposal would not prevent those circumstances, which have already been addressed to a great degree in other domestic and international regulations. Instead, these proposed regulations would improve maritime safety by requiring ship design practices that reduce the consequences of any flooding that may occur.

The direct impact of these proposed regulations on the U.S. shipping industry and the U.S. economy in general would be slight. These proposed regulations would require that all new dry cargo ships meet minimum standards of subdivision and damage stability. The mandatory international standard which this NPRM proposes to implement is one which virtually all U.S. flag ships currently meet.

Because of the different problems they face in meeting a subdivision standard, dry cargo ships can be divided into two categories: General cargo/container ships and roll-on, roll-off (RO-RO) ships.

General cargo and container ships are characterized by cargo operations that are vertical in nature: Cargo is lowered into holds and lifted out again, usually by cranes. Cargo is stowed from the bottom up, so that it is worked on a last-in, first-out basis. This vertical orientation makes it very easy to subdivide a general cargo or container ship. In fact, even such ships that were not built to any standard are usually subdivided with transverse bulkheads

and are able to withstand some damage without loss of the ship.

On the other hand, cargo operations of RO-RO ships are horizontal in nature. Trucks, trailers, farm machinery, military equipment and automobiles are rolled on and off, under their own power. This type of loading operation is very efficient and has led to an increasing number of RO-RO designs. In its most efficient form, a RO-RO has no transverse bulkheads and is completely open from bow to stern. Such a ship is vulnerable to even the smallest damage to its hull. A single small hole can sink the ship. In order to qualify for the U.S. subsidy and mortgage insurance programs, most U.S. flag RO-RO ships have been designed and built with movable bulkheads and doors to subdivide the ship to meet a "one compartment" standard. These subdivided U.S. RO-RO ships are less efficient during loading and unloading than foreign ships of the same size. They cost slightly more to build and carry slightly less cargo. However, unlike existing foreign ships, the subdivided U.S. flag RO-RO ships will meet the international standard that would be implemented by these proposed regulations.

For both general cargo/container ships and RO-RO ships, the standard proposed by this NPRM is currently met by virtually all existing U.S. ships and, therefore, will not be a departure from the normal design practice for new ships. By considering the effects of horizontal and longitudinal subdivision in addition to the traditional transverse boundaries, this proposed standard will allow naval architects flexibility not possible with the traditional "one compartment" standard of subdivision.

C. Historical Perspective

Until recently, there were no domestic regulations or international requirements for dry cargo ships, which may carry sizeable quantities of hazardous materials in packages, to be designed to remain afloat without capsizing after sustaining even minor damage. Most existing U.S. dry cargo ships, including RO-RO ships, were built under a subsidy or mortgage insurance program administered by the U.S. Maritime Administration (MARAD) which required these ships to meet a one compartment standard of subdivision.

The United States has been pressing for an international agreement on dry cargo ship subdivision since the International Convention for the Safety of Life at Sea, 1960. In 1977, after a series of casualties around the world, the Coast Guard restated its desire to have subdivision and damage stability standards for dry cargo ships developed as a matter of urgency, and worked on a one compartment subdivision standard together with the Society of Naval Architects and Marine Engineers. The standard could not be agreed upon internationally, partly because the standard could not be made flexible enough for RO-RO designs which depend upon horizontal and longitudinal subdivision instead of transverse subdivision, and partly because the index of safety was not functionally proportionate to the true degree of safety.

In 1985, the Maritime Safety Committee (MSC) of the International Maritime Organization (IMO) instructed the technical Sub-Committee on Stability and Load Lines and on Fishing Vessels Safety (SLF) to develop a subdivision and damage stability standard based on the probabilistic analysis method. Standards developed were based on the research work done and the equations which were developed for the probabilistic rules for passenger ships (IMO Resolution A.265(VIII)).

The IMO draft regulations were studied by member countries for two years. At SLF 32 in September 1987, the IMO draft regulations were agreed upon and sent to the MSC for their determination on the level of subdivision which should be required. This issue was not resolved until April 1989, following the April 16, 1988, ANPRM which published the Coast Guard's intention to consider draft unilateral regulations. The draft regulations would have required all new foreign and domestic ships operating from U.S. ports to meet the IMO draft regulations and the Coast Guard announced that it would consider requiring all existing ships, foreign and domestic, operating in U.S. ports to meet the IMO draft standard after a phase-in period. Shortly thereafter, the MSC approved and finalized the IMO regulations. They were adopted in May 1990, and became effective as of February 1, 1992, as an amendment to the International Convention for the Safety of Life at Sea, 1974 (SOLAS).

The IMO regulations apply to cargo ships constructed on or after February 1, 1992. A definition of a "new" ship, for the purpose of establishing applicability of the proposed regulations, has been included in the proposed regulations. In order to be consistent with the international standard, the definition of a "new" ship uses a contract date of February 1, 1992 as a base line, with the keel laying and delivery dates following by six months and five years respectively. The Coast Guard's position is that these proposed rules set a minimum standard that has been historically exceeded by U.S. ships and, therefore, that this definition of a "new" ship will not create an undue hardship on the maritime industry.

The IMO regulations have recently been evaluated for application to ships less than 328 feet (100 meters) in length. While the principles used in the IMO regulations are appropriate regardless of ship size, the subdivision of smaller dry cargo ships is further complicated by the need to design cargo spaces that are large enough to allow efficient cargo operations. At the 36th session of SLF there was widespread support for the application of these rules to ships less than 328 feet (100 meters) in length, provided a compromise could be found between the need to subdivide and a reasonable minimum bulkhead spacing. Based on data contained in the multinational collation of results in applying Resolution MSC.19(58) to cargo ships less than 328 feet (100 meters) in length, consensus was reached and a draft SOLAS amendment will be forwarded to the MSC for approval. Although the final language of that recommendation has not yet been adopted, the substance and technical details have been incorporated into § 174.360(b) of these proposed rules. The Coast Guard requests that interested parties comment on the application of the proposed rule to ships less than 328 feet (100 meters) in length. In any event, U.S. flag dry cargo ships which have been designed to meet MARAD Design Letter No. 3 standard will meet the minimum standards of subdivision and damage stability proposed by this NPRM, regardless of length.

These proposed rules are part of a continuing effort by the Coast Guard to promote the development and adoption of satisfactory international standards that can then be adopted into U.S. regulations. Improvement of international standards benefits the public by raising the level of safety of foreign flag vessels visiting U.S. ports. U.S. adoption of the improved international standards allows U.S. flag vessels to better compete with foreign flag vessels.

To fully understand the impact of the proposed rules, they must be considered in conjunction with the draft IMO Code on Intact Stability. This Code is the result of years of international effort to consolidate and refine the intact stability standards for all vessel types. The draft code is currently in near final form and is expected to be adopted at the next IMO Assembly in October 1993.

The Coast Guard intends to propose adoption of many portions of the draft IMO Code of Intact Stability, the most significant of which affects large containerships. The current U.S. regulations for intact stability were developed for 1940's era ships and have proved inappropriate and overly restrictive for large modern containerships. On April 2, 1992, the Coast Guard published a notice in the Federal Register (57 FR 11267) that allows the draft IMO intact stability standard for large containerships to be submitted as an equivalent to the current U.S. requirements for intact stability for containerships greater than 328 feet (100 meters) in length. The combined effect of the changes in both the intact and damage stability standards will be an increase in cargo capacity of U.S. flag vessels of 3 to 8 percent, without added danger to the vessel or crew. The Coast Guard projects that the potential annual benefit for the entire U.S. containership industry could be as high as $250 million.

D. Effectiveness of the Regulations

The detrimental effects of damage can be reduced by the use of watertight bulkheads. If damage occurs in a space between these bulkheads, the water cannot flood the undamaged part of the ship. Flooding will cause the ship to settle lower into the water and heel or trim somewhat. If the bulkheads have been well placed, the ship will not heel or trim enough to capsize.

Subdivision is passive once all watertight doors have been secured. Since it is built into the ship, it is always in place and ready if needed. A one compartment standard of subdivision and damage stability requires ships to be divided by transverse watertight bulkheads and to be operated with sufficient stability so as to remain afloat without excessive heel after damage within any one of the spaces between the bulkheads. This does not mean that a ship built to a one compartment standard will always survive damage. These ships are still vulnerable to even minor damage in way of a bulkhead that allows the flooding of two compartments.

The probabilistic approach of the regulations takes account of the probability of various extents of damage occurring anywhere along the ship's length and the resulting flooding. At the same time it takes account of the probability that the ship will survive the damage given its stability and draft. This provides a rational means of assessing the safety of ships, where flooding is concerned, no matter what their arrangements might be. For instance, a ship may be designed with less subdivision in part of its length, provided it has additional subdivision in areas shown to have a higher probability of damage. In this respect, it frees designers and operators from unnecessarily arbitrary restrictions on arrangement.

Discussion of Comments

On April 6, 1988, the Coast Guard published an ANPRM based on the IMO draft regulations outlined in Annex 2 of SLF 32/21. Considerable effort was expended in developing the draft regulations and the supporting casualty information, statistical data and sample calculations. In addition, the Coast Guard recognized the need to ask some specific questions to members of the concerned public and other organizations which might be affected by implementation of the draft regulations. The Coast Guard asked the following groups to become involved: Ship owners and operators; ship designers; ship masters, officers, and crew; port authorities and the public; national and international shipping interests; marine underwriters, chambers, unions, brokers, and classification societies; other administrations and flag states; and search and rescue organizations.

A. General Comments

Thirteen comments were received concerning the April 6, 1988, ANPRM. On November 6, 1989, the Coast Guard published a second Advance Notice of Proposed Rulemaking (54 FR 46631) to report changes to the IMO draft regulations and reopened the comment period to solicit comments on both the technical merits and the probable economic effect of the revised formula for the required subdivision index. Only one additional comment was received. The comments in response to both ANPRM's have been combined in the following discussion.

Most comments stated support for the draft regulations and the use of the probabilistic methods. One comment indicated the draft regulations allow some simplification of arrangements resulting in reduced construction and operating costs as compared to ships using MARAD Design Letter No. 3. Another comment stated that use of the probabilistic method would result in a lower level of safety than MARAD's existing one compartment standard. This comment may have been based on the assumption that the minimum standard implemented by these proposed regulations would replace the MARAD standard, but this is not the case. These proposed regulations propose a minimum level of subdivision and damage stability for a type of ship for which no minimum requirements currently exist. This rulemaking does not prevent MARAD from maintaining a requirement for a higher standard for ships participating in federal subsidy programs.

Most comments were opposed to the possibility of applying the draft regulations to existing ships, although one suggested such action might be appropriate under special circumstances. It was suggested that existing ships designed to a recognized subdivision standard, such as MARAD Design Letter No. 3, be exempted from these regulations. One comment advocated application to existing ships on a voluntary basis only. One comment included detailed calculations for 18 U.S. flag dry cargo ships representing all common ship configurations. This information allowed comparison of the IMO standard with the one compartment standard in MARAD Design Letter No. 3. In all cases, the attained index for the U.S. flag ships exceeded the required index. On the average, the attained index of the U.S. flag dry cargo ships built to the MARAD one compartment standard, exceeded the minimum standard required by these draft regulations by over 46 percent. This data clearly indicates that MARAD Design Letter No. 3 requires a higher degree of subdivision than the international standard and that no modifications would be necessary for ships built to a one compartment standard in order to meet the requirements of these proposed regulations. Since virtually all U.S. flag ships have been built to the MARAD one compartment standard, there is no compelling reason to apply these proposed regulations to existing ships. Thus, as in the draft regulations, this NPRM applies to new ships only, but owners of existing ships that do not meet any other subdivision requirement will be encouraged to adopt these minimum standards.

Several comments were opposed to the implementation of U.S. regulations prior to an international agreement on this issue. There was opposition to unilateral regulations and concern that multiple standards could result. International agreement has since been reached and the standard that would be implemented by these proposed regulations became effective February 1, 1992.

One comment suggested that regulations should be presented in traditional/English units. The proposed regulations present all lengths in feet,

with the metric equivalent in parenthesis.

B. Response to Specific Questions

The April 6, 1988, ANPRM posed a series of questions related to a wide variety of aspects. Most of the questions concerned the application of the IMO standard to existing ships and foreign ships entering U.S. ports. As discussed above, the proposed regulations in this NPRM apply only to new U.S. flag ships. On the whole, these questions no longer apply and there is no need to discuss them in great depth. All relevant comments have been addressed elsewhere in this discussion.

C. Specific Comments on Draft Regulations

The draft regulations published in the ANPRM were based on a draft version of the international standard that was under development. The comments received as part of this rulemaking were considered during the development of the international standard and many of the suggestions made were incorporated into the SOLAS amendment prior to its adoption. In addition, explanatory notes have been developed and adopted internationally by the Maritime Safety Committee. The Coast Guard intends to publish a Navigation and Vessel Inspection Circular (NVIC) that will contain the MSC resolution adopting these explanatory notes in order to provide naval architects additional guidance in completing the probabilistic calculations and ensure uniform application of the subdivision standard. The following discussion will include both the regulation numbering used in the draft regulations of the April 6, 1988, ANPRM and the corresponding SOLAS regulation.

Section XXX.200 (SOLAS Regulation 25–1). One comment suggested that the subdivision standards should apply to non-self-propelled vessels such as barges. Another suggested that similar standards be developed for ocean going industrial ships. These suggestions both have merit, but are beyond the scope of this rulemaking. While the probabilistic concept is universal in application, the specific rules in this IMO standard were based on damage statistics for dry cargo ships and may not provide an appropriate level of safety to other ship types. It was also suggested that these rules should be applied to integrated tug and barge (ITB) vessels that are dry cargo carriers. It is the Coast Guard's position that when operating as a combined unit, these vessels are subject to the same danger as any other dry cargo ship and that these rules are an appropriate minimum standard of subdivision. To clarify this position, the applicability of the proposed regulations described in § 174.350 specifically mentions ITB's, and a definition of subdivision length of ITB's has been added to proposed § 174.355 that requires the overall length of the combined tug and barge be used in all calculations.

Section XXX.205 (SOLAS Regulation 25–2). One comment did not agree with the definition of partial load line and cited Resolution A.265(VIII) for comparison. Unlike the calculations in Resolution A.265(VIII) for passenger ships, which are based on three loading conditions, these rules are based on only two loading conditions. Consequently, the definition of partial load line was intentionally drafted in SOLAS Regulation 25–2 to be different from the definition in Resolution A.265(VIII).

Section XXX.210 (SOLAS Regulation 25–3). A suggestion that the equation for the required index be simplified was incorporated into the SOLAS Regulation.

As published in the November 6, 1989, ANPRM which reopened the comment period of this rulemaking, the coefficients C_1 and C_2 were revised by the MSC of IMO, resulting in a small reduction in the required index. Only one additional comment was received in this second comment period. The comment expressed concern that the required index was too low and suggested it be raised to a value that would provide an equivalent level of safety to the MARAD one compartment standard. It was not possible to gain international support for an increase in the required index. However, this minimum international standard will not preclude the continued use of higher standards such as MARAD Design Letter No. 3. Higher levels of safety will be sought, as appropriate, through continued refinement and improvement of international standards.

It was further suggested that the required index be redesignated as the minimum allowable index and that a second index be introduced as the recommended index which would be equal to the attained index found in ships built to a one-compartment standard. The intent of this suggestion is appreciated. However, the regulations are minimum standards. Recommendations encouraging higher standards to owners and builders of ships can be made by other means.

Two comments stated that the required index was attainable and provided a reasonable level of safety. The Coast Guard agrees; the creation of an international standard for subdivision and damage stability will result in an increase in vessel safety.

Section XXX.215 (SOLAS Regulation 25–4). One comment questioned the difference between the attained index in this rulemaking and that previously used for passenger ships in Resolution A.265(VIII). Refinements have been made in the calculation of the attained index to better represent small transverse penetrations and damage occurring near the ends of the ship. These changes will also be applied to Resolution A.265(VIII) when that twenty year old standard is modified by the upcoming harmonization of all international standards.

The same comment indicated that the wording requiring that "level trim shall be used except when inconsistent with the vessel's operation" when making these calculations, was too vague and could allow interpretations not in keeping with the intent of safety. The comment indicated that the worst operating trim should be required for all calculations. Any requirement that depends on a subjective evaluation to establish the "worst case" would, by necessity, allow various interpretations. This is counter to IMO's goal of reducing the number of issues left to the discretion of the various flag administrations. Consistency is more important than ensuring that the worst possible case is considered. Therefore, the final wording of the SOLAS amendment states specifically that level trim should be used for all calculations, removing the possibility of various interpretations. The fact that the attained index would be calculated based on level trim rather than a worst case condition was taken into consideration in the development of the required index.

One comment suggested that the attained index be calculated based on three drafts, such as in Resolution A.256(VIII) for passenger ships, as opposed to the two drafts required in the IMO standard. This suggestion has merit; while the Coast Guard considers the calculations for the attained index appropriate, suggestions such as this could be improvements, which could be developed through future review of the international standard.

In addition, this comment correctly points out that both loading conditions evaluated are not required to have an attained index that exceeds the required index, provided that the average attained index exceeds the required index. The suggestion that the attained index be required to exceed the required

index in both loading conditions has considerable merit, as does the suggestion of introducing additional loading conditions to better represent the full range of operating drafts. The Coast Guard will strive to incorporate suggestions such as this as part of the continued refinement of this international standard during its scheduled review in 1994.

Section XXX.220 (Regulation 25–5). One comment requested clarification on the value 'P_i' used in the ANPRM, asking if it was the product of the factors 'A_i' and 'P_i' of Resolution A.265(VIII) regarding the probability of damage at a particular location and the extent of such damage. The comment was correct; the instructions and methodology were changed slightly from those used in Resolution A.265(VIII), but the procedure is essentially the same. A suggestion to clarify some of the wording in this section was incorporated into the international standard prior to adoption.

Section XXX.225 (Regulation 25–6). One comment suggested that a better definition of "capable of being closed weathertight" be provided for clarification. The International Convention on Load Lines, 1966, provides detailed definitions of both watertight and weathertight. It was determined that no additional clarification was needed.

One comment indicated that the survival criteria, specifically the 25 degree allowable angle of equilibrium, was too lenient and pointed out that lifesaving equipment and pumps were normally only designed to operate at angles up to 15 degrees. Items such as emergency generators, fire pumps, and lifesaving equipment can be designed to operate at higher angles with little additional cost, especially when this is done as part of the initial specifications of a new ship. While passenger ships are limited to a final heel angle of 12 degrees in order to allow for the simultaneous evacuation of large numbers of passengers from both sides of a ship, this is not necessary for dry cargo ships. These ships are equipped with sufficient lifeboat capacity to allow the total evacuation of the crew from either side of the ship without relying on lifeboats on the ship's high side, which may be impossible to launch. In addition, evacuation of the relatively small crew of trained mariners can be conducted much quicker on a dry cargo ship, even at higher angles of heel, than possible on passenger ships where most of the persons on board are passengers with no training.

This comment also expressed the opinion that shifting cargo may further reduce stability if high angles of heel are allowed, but there is currently no data available to support this position.

Section XXX.230 (SOLAS Regulation 25–6). Two comments expressed concern with the concept of an upper limit of the vertical extent of damage, one of which questioned how the upper limit was set and the other suggesting modifications that would essentially require an unlimited vertical extent of damage. The standard adopted by the IMO, that is proposed to be implemented in this NPRM, is based on actual international casualty statistics of the damage inflicted on ships hit by other ships. These statistics do not support the need for an unlimited vertical extent of damage. In simple terms, these statistics show a tendency for ships to collide with ships of the same relative size and that the vertical extent of damage can be related directly to a ship's bow height. This data was used to set an upper limit of the vertical extent of damage.

Although the criteria used in the international standard was based on actual damage statistics, the vertical extent of damage was not always available for analysis. Damage cards used to collect casualty statistics have been modified to allow this information to be recorded and will provide an improved data base for future revisions of this standard. The next revision is scheduled for 1994.

Although there may be minor changes in the international standard as more data becomes available, the approach used in this provision of the standard is necessary to account for the improvements in damage stability that are possible through the use of horizontal subdivision.

One comment indicated that the variable 'd' (draught) was not clearly defined. While this variable is not defined in this portion of the SOLAS ammendment, it is clearly defined in Regulation 25–2 and used consistently through out the amendment.

Section XXX.235 (SOLAS Regulation 25–7). Three comments did not agree with the use of a single value of permeability for all dry cargo spaces. They suggested that the value of permeability should vary to match the cargo type more realistically. This is counter to IMO's goal of reducing the number of issues left to the discretion of the various flag administrations. Consistency is more important than ensuring that the calculation represents an actual flooding condition. The international standard proposed to be implemented in this NPRM, limits the possible permeability to a single value in order to prevent circumvention of the standard's intent by mathematical manipulation. The fact that the attained index would be calculated based on a standard permeability rather than the actual permeability was taken into consideration in the development of the required index. Development of alternatives which could be used to refine these calculations have been initiated by IMO, and may be considered for future adoption.

Section XXX.240 (SOLAS Regulation 25–8). These proposed regulations require that information be provided to the master, that will provide rapid and simple guidance as to the stability of the ship in various conditions of service. Damage stability plans are to be posted on the bridge and detailed information made available to the officers of the ship. One comment suggested that stability information be posted on the bridge in a graphical format which provided information for each combination of damaged compartments possible. There are many ways to present this type of information to ship operators. Variations in ship design, complexity of stability information, and experience level of the crew warrant flexibility in the format utilized to allow ship owners and designers to provide this information in the most appropriate form. Therefore, this comment was not adopted in this NPRM.

One comment pointed out that posting a stability plan served little purpose if these regulations were applied to seagoing barges. These proposed regulations apply only to self-propelled seagoing ships. However, for the purpose of these proposed regulations, an ITB is considered a seagoing ship when operating in the combined mode and stability information required by these proposed regulations would be available on the tug for use by its crew.

One comment suggested a change to the wording used in the ANPRM that would clarify that the limiting metacentric height (GM) provided as part of a ship's stability information, must reflect both the intact and damage stability criterion as appropriate. The current requirements for a stability booklet in 46 CFR 170.110 make this point sufficiently clear as to not require duplication.

Discussion of Proposed Regulations

This NPRM would amend the applicability provision of § 174.005 to include oceangoing ships of 500 gross tons or more, calculated in accordance with the International Convention on Tonnage Measurement of Ships, 1969, designed primarily for the carriage of

dry cargoes, including RO-RO ships. In addition, this NPRM would add a new subpart J to part 174, Special Rules Pertaining to Dry Cargo Ships. That subpart would include: a specific applicability section; definitions for "subdivision length" and "new ship", as used in these proposed regulations; and, loading restriction requirements. For each ship to which the subpart would apply, calculations must be performed that would demonstrate compliance with the international requirements for damage stability of dry cargo ships. These proposed regulations also include requirements for dry cargo ships of less than 328 feet (100 meters) in length. For these ships, the required index must be calculated from the proposed equation.

Renumbering of Proposed Regulations

The pending addition of subparts G and H to 46 CFR part 174, conflicted with the numbering used in the original draft regulations of the ANPRM. Therefore, the numbering used in the ANPRM has been revised in this NPRM.

Regulatory Evaluation

This proposal is considered to be non-major under Executive Order 12291. However, it is considered to be significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). The ANPRM was considered significant because it suggested applying the proposed standard in advance of formal adoption by IMO. Further, the ANPRM announced that the Coast Guard would consider applying the proposed standard to new and existing foreign ships entering U.S. ports and generated a high level of interest in the international community. The adoption of a mandatory international subdivision and damage stability standard terminated the necessity for unilateral U.S. regulations. The proposed regulations in this NPRM would, if adopted, apply to new U.S. flag ships only. However, the Coast Guard continues to consider this rulemaking significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) because of the public interest in, and importance of, establishing minimum standards of subdivision and damage stability for dry cargo ships. The Coast Guard expects the economic impact of this proposal to be so minimal that a Regulatory Evaluation is unnecessary. These proposed regulations would implement a mandatory minimum level of subdivision for new ships. As explained earlier, virtually all U.S flag dry cargo ships are already built to a higher standard in order to qualify for MARAD subsidies. This results in no increased cost for subsidized ships due to these proposed regulations. If new ships were built without MARAD subsidies, these proposed regulations would require a subdivision standard already adopted on a world wide basis and would have no adverse effects on competition.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). These proposed regulations will impact owners and operators of large, oceangoing ships. None of these entities can be classified as a small entity. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this proposal, if adopted will not have a significant economic impact on a substantial number of small entities.

Collection of Information

Under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) the Office of Management and Budget (OMB) reviews each proposed rule which contains a collection of information requirement to determine whether the practical value of the information is worth the burden imposed by its collection. Collection of information requirements include reporting, recordkeeping, notification, and other, similar requirements.

This proposal would not increase the paperwork burden on the public. The only paperwork requirements involve ship design calculations that are used in the development of stability information that is already subject to Coast Guard review. The submittal of the stability information resulting from these and other calculations has already been approved by the Office of Management and Budget (OMB) and has been assigned OMB number 2115–0559.

Federalism

These proposed regulations would affect only large entities which own or operate ships engaged in interstate or international commerce. The authority to regulate the stability design criteria of these vessels has been committed to the Coast Guard by Federal statutes. These proposed regulations would, therefore, preempt state and local regulations regarding subdivision and damage stability for dry cargo ships engaged in interstate or international commerce.

The Coast Guard has analyzed this proposal in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that these proposed regulations do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of these proposed regulations and concluded that, under section 2.B.2 of Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental documentation. These proposed regulations would require a minimum standard of subdivision and damage stability, for a type of ship for which none existed, with the intent of reducing the chance of a ship sinking and subsequently polluting the environment. This proposal will not result in any of the following:

1. Significant cumulative impacts on the human environment;

2. Substantial controversy or substantial change to existing environmental conditions;

3. Impacts which are more than minimal on properties protected under 4(f) of the DOT Act as superseded by Public Law 97–449, and section 106 of the National Historic Preservation Act; or

4. Inconsistencies with any Federal, State or local laws, or administrative determinations relating to the environment.

A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 46 CFR Part 174

Marine safety, Vessels.

For the reasons set out in the preamble, the Coast Guard proposes to amend title 46, chapter I, subchapter S, part 174 of the Code of Federal Regulations as follows:

PART 174—SPECIAL RULES PERTAINING TO SPECIFIC VESSEL TYPES

1. The authority citation for part 174 continues to read as follows:

Authority: 42 U.S.C. 9116, 9119, 9153; 43 U.S.C. 1333; 46 U.S.C. 3306, 3703, 5115; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

2. Section 174.005 is amended by adding a new paragraph (i) to read as follows:

§ 174.005 Applicability.

* * * * *

(i) Oceangoing ships greater than 500 gross tons, as calculated by the International Convention on Tonnage Measurement of Ships, 1969, designed primarily for the carriage of dry cargoes, including roll-on/roll-off ships.

3. Part 174 is amended by adding a new Subpart J to read as follows:

Subpart J—Special Rules Pertaining to Dry Cargo Ships

Sec.

Subpart J—Special Rules Pertaining to Dry Cargo Ships

§ 174.350 Specific applicability.

This subpart applies to each new ship of 500 gross tons or over, as calculated by the International Convention on Tonnage Measurement of Ships, 1969, designed primarily for the carriage of dry cargoes, including roll-on/roll-off ships and integrated tug and barges (ITBs) when operating as a combined unit.

§ 174.355 Definitions.

New ship means a ship:

(1) For which the building contract is placed on or after February 1, 1992; or

(2) In the absence of a building contract, the keel of which is laid or which is at a similar stage of construction on or after August 1, 1992; or

(3) The delivery of which is on or after February 1, 1997; or

(4) Which has undergone a major conversion:

(i) For which the contract is placed on or after February 1, 1992; or

(ii) In the absence of a contract, the construction work of which is begun on or after August 1, 1992; or

(iii) Which is completed on or after February 1, 1997.

Subdivision Length (L_s) as used in this subpart, is the greatest projected molded length of that part of the ship at or below the deck or decks limiting the vertical extent of flooding with the ship at the deepest subdivision load line. Integrated tug and barges (ITBs) shall be considered a single ship when establishing subdivision length.

§ 174.360 Calculations.

(a) For each ship to which this subpart applies, calculations must be performed which demonstrate compliance with The International Convention for the Safety of Life at Sea, 1974, as amended, Chapter II–1, Part B–1. This compliance must be reflected in information on loading restrictions, such as a maximum height of the center of gravity (KG) or minimum metacentric height (GM) curve that is part of the stability information required by § 170.110 of this chapter.

(b) For ships with a subdivision length (L_s) of less than 328 feet (100 meters) the required index must be calculated from the following equation:

$$R_{<100} = 1 - (1/(1 + (L_s/100) * (R_{100}/(1 - R_{100}))))$$

Where:

R_{100} is the required index calculated for a ship with a subdivision length of 328 feet (100 meters) and L_s is in meters.

Dated: July 14, 1992.

J.W. Kime,

Admiral, U.S. Coast Guard Commandant.

[FR Doc. 92–17001 Filed 7–21–92; 8:45 am]

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federal register

Wednesday
July 22, 1992

Part III

Department of Health and Human Services

Administration for Children and Families

Office of Refugee Resettlement; Discretionary Grants for Fiscal Year 1992; Notice of Request for Applications

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Office of Refugee Resettlement; Request for Applications for Micro-Enterprise Development Projects Under the Office of Refugee Resettlement's Fiscal Year 1992 Discretionary Grants Program for Services to Refugees

AGENCY: Administration for Children and Families, HHS.

ACTION: Request for applications for Micro-Enterprise Development projects under the Office of Refugee Resettlement's Fiscal Year 1992 discretionary grants program for services to refugees.[1]

SUMMARY: The Office of Refugee Resettlement (ORR) announces that competing applications will be accepted for grants pursuant to the Director's discretionary authority under section 412(c) of the Immigration and Nationality Act (INA), as amended by section 412 of the Refugee Act of 1980 (Pub. L. No. 96–212), 8 U.S.C. 1522(c); section 501(a) of the Refugee Education Assistance Act of 1980 (Pub. L. No. 96–422), 8 U.S.C. 1522 note, insofar as it incorporates by reference with respect to Cuban and Haitian entrants the authorities pertaining to assistance for refugees established by section 412(c) of the INA, as cited above; and the Refugee Assistance Extension Act of 1986 (Pub. L. No. 99–605).

Grants made under this program announcement are subject to the availability of funds for support of these activities. Awards, made on a competitive basis, will be for a one-year budget period, although project periods may be for three years. Applications for continuation grants funded under these awards beyond the one-year budget period but within the three-year project period will be entertained in subsequent years on a noncompetitive basis, subject to availability of funds, timely and successful completion of the project, and ORR's determination that this would be in the best interest of the government. This announcement contains forms and instructions for submitting an application.

CLOSING DATE: The closing date for submission of applications to be considered for FY 1992 is August 18, 1992.

FOR FURTHER INFORMATION CONTACT: Carmel Clay Thompson, Office of Refugee Resettlement, 370 L'Enfant Promenade SW., Washington, DC 20447, Telephone: (202) 401–4560.

SUPPLEMENTARY INFORMATION:

Part A. General Information

1. Legislative Authority

Section 412(c)(1)(A) of the INA authorizes the Director to make grants to, and enter into contracts with, public or private nonprofit agencies for projects specifically designed—(iii) to provide where specific needs have been shown and recognized by the Director, health (including mental health) services, social services, educational, and other services. Additionally, INA section 412(a)(4)(A) states in carrying out this section, the Director, the Secretary of State, and such other appropriate administering official are authorized—(i) to make loans.

2. Agency Goal

The Director has established a broad agency goal of promoting innovative program design, within the framework of joint public-private partnerships, in response to the challenge of reducing welfare dependency and advancing the attainment of economic self-sufficiency among refugees. To this end, ORR announces the availability of funding for Micro-Enterprise Development.

3. Purpose and Methodology

The purpose of this program is to provide grants to intermediary agencies to develop and administer micro-enterprise programs consisting of (a) small-scale financing available through microloans to refugees who have been, or currently are, engaged in an activity designed to generate income, regardless of how small its size; and (b) technical assistance through training for micro-enterprise development to refugee entrepreneurs receiving the microloans.

This program also provides for technical assistance to the agencies funded under this announcement to coordinate their policies and procedures for developing and administering refugee microloan funds.

The targeted population for these loans may include refugees who are receiving public assistance, or are at risk of receiving public assistance, and who lack the financial resources, credit history, or personal assets to otherwise qualify for small loans through standard commercial institutions. Only refugees who have arrived in the United States within the five year period preceding enrollment in the project are eligible to receive ORR-funded microloans. All refugees may participate in all other components of the program.

Secondarily, ORR is interested in seeing the extent to which this initiative may result in the growth of micro-enterprises in refugee communities and the expansion of entrepreneurial skills and expertise among refugees.

4. Eligible Applicants

Eligible applicants are States and public or private, nonprofit organizations and institutions. A partnership or consortium of eligible organizations may submit a joint application to participate in a micro-enterprise program as a single entity, so long as one organization is clearly identified as the grant recipient with primary administrative and fiscal responsibilities. Once a grant has been awarded to an affiliated group of applicants, a single partner of the group would be precluded from continuing the project alone without prior approval of ORR.

5. Availability of Funds

ORR expects to award up to $550,000 in the fourth quarter of Fiscal Year 1992 for new grants. ORR anticipates awarding approximately four micro-enterprise development grants, at a funding level of approximately $125,000 for each award, and an additional single grant in the amount of $50,000 to an organization to assist with participating agencies' technical planning.

The Director reserves the right to award more or less than the funds described above in the absence of worthy applications or under such other circumstances as may be deemed to be in the best interest of the Government. Applicants may be requested to reduce the scope of selected projects to accommodate the level of assistance provided.

6. Prohibition on the Use of Funds

ORR will not fund projects where the role of the applicant is primarily to serve as a conduit for funds to organizations other than the applicant. This does not bar subgranting or contracting for specific services or activities.

[1] In addition to persons who meet all requirements of 45 CFR 400.43, eligibility for refugee social services also includes: (1) Cuban and Haitian entrants, under section 501 of the Refugee Education Assistance Act of 1980 (Pub. L. No. 96–422); (2) certain Amerasians from Vietnam who are admitted to the U.S. as immigrants under section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988, as included in the FY 1988 Continuing Resolution (Pub. L. No. 100–202); and (3) certain Amerasians from Vietnam, including U.S. citizens, under title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1989 (Pub. L. No. 100–461). For convenience, the term "refugee" is used in this notice to encompass all such eligible persons unless the specific context indicates otherwise.

ORR does not anticipate approving the funding of applications which propose to subgrant or contract all or most of the proposed activities under this initiative to an unrelated entity.

7. Project Periods

Projects will be approved on a competitive basis for a three-year period. Budget periods will be limited to 12 months each. Continuation applications will be entertained subsequently on a non-competitive basis, subject to the availability of funds, grantee's performance, continued need, and the best interest of the Government.

8. Definition of Terms

For purposes of applications under this announcement, the following definitions apply:

Business is any lawful activity that generates income regardless of its size.

General program income refers to all program income accruing to a grantee during the period of grant support or to a subgrantee during the period of subgrant support.

Intermediary agencies are micro-enterprise grantees responsible for developing and administering micro-enterprise programs.

Peer borrower groups are comprised of several prospective loan fund borrowers, each of whom is developing a separate micro-enterprise. Intermediary agencies typically make loans to peer borrower groups who collectively determine which member of the group will receive a loan and in what order. Members of a peer borrower group provide technical assistance and support to each other, and the loan repayment record of each member may influence the group's ability to receive future loans.

Self-sufficiency is, minimally, a condition whereby individuals or families do not require or qualify for financial support in the form of public assistance, by reason of earned income.

Microloans consist of small, short term amounts of credit, generally in sums less than $5,000, made by an intermediary agency to low-income entrepreneurs or potential entrepreneurs for start-up or very small micro-enterprise endeavors. These entrepreneurs typically have few personal assets, little savings, and do not qualify for standard commercial loans.

Part B. Program Description

1. Use of Grant Funds by Intermediary Agencies

ORR funds may be used for the administrative costs associated with managing and servicing a microloan portfolio, and for the provision of entrepreneurial technical assistance to prospective borrowers, to loan recipients and to grantee intermediary agencies. Grantees may also propose a model in which one or several of these activities will be provided by a subgrantee.

Applicants whose project design includes ORR-funded microloans must establish a revolving loan fund to disburse these funds. Funds residing in revolving loan funds may be utilized multiple times as loans to individuals. ORR grant funds for a revolving loan fund will be capped for all new grantees at $50,000 for the first budget period. ORR does not anticipate funding projects that propose individual loans for periods greater than three years.

Program Income. General program income, in the form of interest earned on a loan principal, may be retained by the intermediary agency during the period of grant support and used for costs of the project so long as these costs further the objectives of the grant and the Federal statute under which the grant was made. Specifically, program income of this type may be used to expand the number of micro-enterprise loans to be made available to the client population, in accordance with 45 CFR 74.42(e), *Additional Costs Alternative*. Program income generated by the repayment of the loan principal is to be placed in the revolving loan fund to be used for making microloans to eligible borrowers.

Applicants must include in the project design a schedule for the collection and liquidation of all loans and the reversion of repaid loan equity (including interest) to the Federal Government within a three-year period after the expiration of the grant. The applicant must also define the average anticipated loan period and the maximum loan period.

ORR encourages the submission of applications which propose to establish a revolving loan fund based on a peer borrowing group model. (Applicants interested in exploring peer group borrowing may wish to investigate current models in the field of micro-enterprise development, such as that of the Grameen Bank of Bangladesh which provides credit to very small enterprises.)

ORR also encourages the submission of applications which propose to establish a partnership with a commercial bank or other traditional lending institution whereby Federal grant money will be leveraged by commercial loans, and refugee borrowers will have the opportunity of establishing credit-worthy histories with traditional lending institutions. To that end, ORR does not encourage the use of below-market level rates of interest for the loan funds. If appropriate, applicants should include letters of intent or interest from a commercial bank in their application.

Successful applicants will be required to establish an advisory committee with representatives from the local commercial sector and from the refugee community.

To ensure the exchange of technical and training information among participants, all grantee agencies and designated partners are strongly encouraged to attend two training conferences during each year of their participation in the Program at their own cost. Grant funds may be used to offset the cost of attendance.

2. Microloans to Refugee Entrepreneurs

Overview

Successful applicants for these funds will establish refugee revolving loan funds, using ORR grant funds, funds obtained from commercial lending institutions, or a combination of both, to provide and manage microloans to individuals. The intended purpose of the loan funds is to address gaps in the existing capital market for micro-entrepreneurs and prospective micro-entrepreneurs, that is, small, individual entrepreneurs seeking to expand their income-generating capacity.

Intermediary Agency Responsibilities

The micro-enterprise grantees, referred to as intermediary agencies, will have primary responsibility for determining the eligibility and credit-worthiness of refugee borrowers. Intermediary agencies will also determine lending policies, procedures and loan amounts, and are responsible for collecting and servicing microloan payments. In support of these, intermediary agencies must maintain written loan policies and procedures.

Proceeds from loan collections are to be recycled through the revolving loan fund to be used for re-lending to eligible borrowers.

Restriction on Loan Amount

ORR grant funds may be used for microloans to individual refugee entrepreneurs in sums not to exceed $5,000. The total loan amount may exceed the $5,000 limitation only to the

extent that the intermediary agency is able to match the ORR-supported microloan amount with funding from other resources on a one-to-one basis. In no case may a microloan exceed $10,000 under this program.

Interest Rate

The interest rate charged on microloans may not exceed four percentage points above the New York Prime lending rate at the time of loan approval.

Maturity

Microloans will have a maximum maturity of three years.

Fees

The intermediary agency may not charge fees, points, or other amounts to the individual borrower applying for a microloan other than actual costs associated with obtaining, approving and closing the approved microloan. Additionally, individual borrowers may not be solicited for contributions toward the cost of training or technical assistance received under this program.

Use of Loans

Microloans may be used for working capital, inventory, supplies, furniture, fixtures, machinery, tools, equipment, building renovation and/or leasehold improvements.

Microloan funds may not be used for the following types of businesses:

- As venture capital for established businesses that are attempting major expansion, particularly where such businesses may qualify for commercial loans.
- For concerns engaged in gambling or speculation of any type.
- For any illegal activity or production, or for the service or distribution of illegal products.
- For purposes not related to micro-enterprise development, e.g., for the purchase of an auto for transportation.

Examples of micro-enterprises which might qualify for this type of loan or business credit are found in small-scale repair, manufacturing, service, or agricultural businesses.

Eligibility

Eligibility for individual loan applicants is limited to those refugees who have arrived in the United States within the five years preceding enrollment in the project. Applicants are encouraged to target a refugee population that has arrived in the United States within the two years preceding project enrollment.

3. Application Content

Each application must contain the following documents:

a. A description of the applicant's organizational structure.

b. A copy of the applicant's IRS Tax Exemption Certificate and identification of IRS code citation of tax exempt status.

c. Copies of the last two fiscal year financial statements, including balance sheets and income statements.

d. A monthly cash flow chart for the three year period beginning October 1, 1992 anticipating selection into this program at the requested funding level.

e. A program narrative that includes a description of the project and project activities, a plan for fiscal and project management, a time table for activities, a project organization chart, a description of staffing, and resumes or qualifications of staff.

Additionally, applicants should include the following information:

- An analysis of capital needs and interest in micro-enterprise development of targeted refugee populations;
- The purpose of the project, a description of the types of loans to be made, the types of micro-enterprises to which it will be targeted, and the credit needs these enterprises are anticipated to have;
- A description of the structure, approach or model of the project, e.g., the extent to which loans will be made on an individual or group basis; outreach activities; the relationship to affiliate agencies; provisions for credit enhancements, such as loan loss reserves; performance criteria to be used in evaluating loans and making decisions with intermediaries or commercial lending institutions; a description of the management and operation of the project, and the management and servicing of the loan funds; and a discussion of the applicant's lending history, if applicable;
- A discussion of the extent to which the applicant proposes to leverage grant monies with other sources of capital for program participants through access to other funding sources or linkage with other financial institutions;
- The anticipated size of the revolving loan fund and its terms (e.g., maximum number of loans and loan size to be made available, interest rates, repayment terms and policies, projected default rates, requirements for loan loss reserves, candidate screening and lending criteria, application procedures, projected loan activity and the activities for which loans to individuals may be used; and a schedule for the collection and liquidation of all loans and reversion of repaid loan equity to the Federal Government;
- A description of the entrepreneurial technical assistance proposed for refugee loan borrowers (individuals or groups);
- A profile of the refugee participants, including: projected employment and/or welfare status; qualifying income, length of time in the United States; and the degree to which English language proficiency will be a prerequisite to participation in the project;
- A discussion of the impact of loan funds and business assets on clients' welfare status if the project proposes to target borrowers who are receiving public assistance;
- A budget narrative which includes a discussion of administrative costs;
- A description of the data collection, management procedures and analysis for tracking project milestones, the outlays under the project and of the loan funds, loan repayments, profit and loss statements or business reports, site visits, and technical assistance needs of project participants;
- Projected performance, including the estimated number of micro-enterprise loans, dollars invested; the costs associated with creation of a micro-enterprise or job; business survival rates; average income earned; the extent to which participating refugees achieve self-support; the ability of the fund itself to achieve self-sufficiency; and savings to the Federal Government in welfare costs discontinued by project participants due to earned self-employment income;
- Policies and procedures proposed regarding program or grant-related income and its disposition.

Part C. Criteria for Competitive Review of Applications

Applications will be reviewed competitively and scored by a review panel of experts in accordance with the HHS Grants Administration Manual and according to the criteria stated below for each program area. The results of the review panel's scores and explanatory comments will assist the Director, ORR, in making recommendations for funding to the Assistant Secretary. Reviewers' scores will weigh heavily in funding decisions but will not be the only factors considered. Applications generally will be considered in order of the average scores assigned by reviewers. However, highly ranked applications are not guaranteed funding since other factors are taken into consideration, including: Comments of reviewers; ACF/ORR officials; previous program performance of applicants; compliance with grant

terms under previous DHHS grants; audit reports; and investigative reports. Final funding decisions will be made by the Director, ORR.

Specific review criteria are as follows:

Overall appropriateness of targeted population, to include, (1) an analysis of capital needs and evidence of refugee interest in micro-enterprise; and (2) a discussion of the extent to which the project structure, policies and procedures are consistent with the entrepreneurial knowledge base and skill level of the project participants. (25 points maximum).

Organizational management capability and history of experience with either refugees or low-income loan applicants. Factors to be considered here include the applicant's financial resources, performance and creditworthiness. (30 points maximum).

Clarity and appropriateness of the project design, demonstrating an understanding of the concept of micro-enterprise endeavors, clear and appropriate implementation procedures, a financial plan and a time table. (30 points maximum).

Appropriateness and reasonableness of the proposed budget, including a description of the applicant's plan for fiscal management of each proposed activity, including start-up time, ongoing timelines, and a narrative justification to support each line. (15 points maximum). Bonus points: (20 points maximum).

Up to ten (10) bonus points may be scored on applications which propose to match ORR grant dollars used in microloan revolving funds with financing from commercial lending institutions or other non-Federal financial sources.

Up to ten (10) additional bonus points may be scored on applications which propose a project design in which a majority of the refugee borrowers will have arrived in the United States within the two-year period prior to enrollment in the project.

Part D. Grant for Assistance to Intermediary Agencies

ORR intends that the loan programs will be complementary to each other in design and implementation features. To that end, ORR will award one grant in an amount not to exceed $50,000 to a private non-profit, non-participating agency for the purpose of assisting grantees (intermediary agencies) in the administration of microloan funds, in the development of appropriate financial systems for administering these projects, and for securing additional financing for microloans from commercial lending institutions. Intermediary agencies will be given access to standardized documents, policies and procedures that have been developed or gathered during the first year of this initiative.

Interested organizations should submit an application package, in accordance with instructions stated below in part E, Application Preparation and Submission, including the following:

1. A description of the applicant's organizational structure, staff qualifications, experience in micro-enterprise development, and expertise in business management principles and the operation of revolving loan funds.

2. A narrative description of technical assistance activities for approximately 6 grantee intermediary agencies, with a timetable and schedule for the preparation of site-visit reports.

3. A line-item budget and budget narrative.

Applicants for the technical assistance grant will be reviewed competitively and scored by a review panel of experts in accordance with the HHS Grants Administration Manual and according to the criteria stated below. Funding decisions will be made in accordance with the procedures outlined in part C above. Specific review criteria are as follows:

Organizational expertise and history of experience in microenterprise development and in providing technical assistance and training to intermediary agencies (40 points maximum).

Clarity and appropriateness of the project design for technical assistance (30 points maximum).

Reasonableness and appropriateness of the proposed budget. (30 points maximum).

Part E. Application Preparation and Submission

1. Availability of Forms

Attachments contain all of the standard forms necessary for the application for awards under this announcement.

Copies of the **Federal Register** containing this announcement are available at most local libraries and Congressional District Offices for reproduction. If copies are not available at these sources, they may be obtained by writing or telephoning the following office: Office of Refugee Resettlement, 370 L'Enfant Promenade SW., Washington, DC 20447, Telephone: (202) 401–4560.

2. Contents of the Application

Each application should include one signed original and two additional copies of the following:

a. A completed Standard Form 424 which has been signed by an official of the organization applying for the grant who has authority to obligate the organization legally. The applicant must be aware that in signing and submitting the application for this award, it is certifying that it will comply with the Federal requirements concerning the drug- free workplace and debarment regulations.

b. The typed or printed names, titles and signatures of parties within the applicant agency who have fiduciary responsibility for microloan notes and/or microloan closing documents, to the extent these differ from a. above.

c. A completed "Budget Information—Non-Construction Programs" form (SF–424A).

d. A signed "Assurances—Non-Construction Programs" form (SF–424B).

e. Signed certifications for a Drug-Free Workplace, Debarment, and Anti-Lobbying.

f. A Project Narrative consisting of the elements described under part B, section 3, above.

3. Application Procedures and Submission

Applications for awards under this program announcement must be submitted on Standard Form (SF)–424 provided for that purpose. The instructions and forms required for submission of applications are attached. The forms may be reproduced for use in submitting applications. Applications must be submitted by the closing date of (Date to be determined).

a. Deadlines: Applications will be considered as meeting an announced deadline if they are either:

(1) Received on or before the deadline date at a place specified in the program announcement, or

(2) Sent on or before the deadline date and received by the granting agency in time for the independent review. (Applicants must be cautioned to request a legibly edited U.S. Postal Service postmark or to obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

b. Late Applications: Applications which do not meet the criteria in paragraph a. of this section are considered late applications. The granting agency shall notify each late applicant that its application will not be considered in the current competition.

c. Extension of Deadlines: The granting agency may extend the deadline for all applicants because of acts of God such as floods, hurricanes, etc., or when there is a widespread disruption of the mails. However, if the

granting agency does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicant.

d. Once an application has been submitted, it is considered as final and no additional materials will be accepted by ORR. An application with an original signature and two copies is required. Applications, if mailed, should be addressed to: Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade, SW., 6th Floor, Washington, DC 20447.

Applications, if hand delivered, should be taken to: Administration for Children and Families, Division of Discretionary Grants, 901 D Street SW., 6th Floor, Washington, DC 20447.

Intergovernmental Review

(For State applicants only).

This program is covered under Executive Order 12372, "Intergovernmental Review of Federal Programs," and 45 CFR part 100, "Intergovernmental Review of Department of Health and Human Services Programs and Activities." Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

All States and Territories except Alaska, Idaho, Kansas, Louisiana, Minnesota, Nebraska, Oregon, Virginia, Pennsylvania, American Samoa and Palau have elected to participate in the Executive Order process and have established Single Points of Contact (SPOCs). Applicants from these eleven jurisdictions need take no action regarding Executive Order 12372. Applicants for projects to be administered by Federally recognized Indian Tribes are also exempt from the requirements of Executive Order 12372. Otherwise, applicants should contact their SPOCs as soon as possible to alert them of the prospective application and to receive any necessary instructions. Applicants must submit any required material to the SPOCs as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a.

Under 45 CFR 100.8(a)(2), an SPOC has 30 days from the application deadline date to comment on proposed new or competing continuation awards.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to differentiate clearly between mere advisory comments and those official State process recommendations which they intend to trigger the "accommodate or explain" rule.

When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 6th Floor, OFM/DDG, 370 L'Enfant Promenade SW., Washington, DC 20447.

A list of single points of contact for each State and Territory is included as Attachment E of this announcement.

Applicable Regulations

The following HHS regulations are applicable under these grants:

42 CFR Part 441, Services: Requirements and Limits Applicable to Specific Services—
Subpart E, Abortions
Subpart F, Sterilizations
45 Part 16, Procedures of the Departmental Grant Appeals Board
45 CFR Part 46, Protection of Human Subjects
45 CFR Part 74, Administration of Grants
Sections 74.62(a) Non-Federal Audits
74.173 Hospitals
74.174(b) Other non-profit organizations
74.304 Final decisions in disputes
74.710 Real property, equipment, and supplies
74.715 General program income
45 CFR Part 76, Governmentwide Debarment and Suspension (Non-procurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)
Subpart F, Drug-Free Workplace Requirements (Grants)
45 CFR Part 80, Nondiscrimination Under Programs Receiving Federal Assistance Through the Department of Health and Human Services Effectuation of Title VI of the Civil Rights Act of 1964
45 CFR Part 81, Practice and Procedures for Hearings Under Part 80 of this Title
45 CFR Part 84, Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving Federal Financial Assistance
45 CFR Part 86, Nondiscrimination on the Basis of Sex in Education Programs and Activities Receiving or Benefitting from Federal Financial Assistance
45 CFR Part 91, Nondiscrimination on the Basis of Age in HHS Programs or Activities Receiving Federal Financial Assistance
45 CFR Part 92, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments
45 CFR Part 93, New Restrictions on Lobbying
45 CFR Part 95, General Administration—Grant Programs (Public Assistance and Medical Assistance)
(Subpart E, Cost Allocation Plans)
45 CFR Part 100, Intergovernmental Review of Department of Health and Human Services Programs and Activities
45 CFR Part 400, Refugee Resettlement Program
45 CFR Part 401, Cuban/Haitian Entrant Program

Post-Award Requirements—Records and Reports

Grantees are required to file Financial Status (SF–269) and Program Progress Reports on a quarterly basis. Funds shall be accounted for and reported upon separately from all other grant activities. Successful applicants for micro-enterprise development projects will be given specific instructions by ORR, following the award of the grant, for reporting grant performance and loan portfolio information.

The official receipt of all correspondence is the Division of Discretionary Grants. The original copy of each report shall be submitted to the Grants Management Specialist, Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 6th Floor, OFM/DDG, 370 L'Enfant Promenade SW., Washington, DC 20447. A copy should be sent simultaneously to the Division of Operations, ORR. The mailing address is: Office of Refugee Resettlement, Division of Operations, Aerospace Building, Sixth Floor, 370 L'Enfant Promenade, SW., Washington, DC 20447.

The final Financial and Program Progress Reports shall be due 90 days after the budget expiration date or termination of grant support.

Although ORR does not expect the proposed components/projects to include evaluation activities, it does expect grantees to maintain adequate records to track and report on project outcomes and expenditures by budget line item. The following certifications are attached: Drug-Free Workplace, Debarment, and Anti-Lobbying.

The Catalog of Federal Domestic Assistance (CFDA) number assigned to this announcement is 93.038.

Dated: July 13, 1992.

Chris Gersten,

Director, Office of Refugee Resettlement.

BILLING CODE 4130-01-M

Attachment A

APPLICATION FOR FEDERAL ASSISTANCE

OMB Approval No. 0348-0043

1. TYPE OF SUBMISSION: *Application* ☐ Construction ☐ Non-Construction; *Preapplication* ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address *(give city, county, state, and zip code)*:	Name and telephone number of the person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER (EIN):

☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify) _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other *(specify)*:

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐ – ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(cities, counties, states, etc.)*:

13. PROPOSED PROJECT: Start Date	Ending Date	14. CONGRESSIONAL DISTRICTS OF: a. Applicant	b. Project

15. ESTIMATED FUNDING:		
a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE _____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

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BILLING CODE 4130-01-C

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item and entry:

1. Self-explanatory.

2. Date application submitted to Federal agency (or State if applicable) and applicant's control number (if applicable).

3. State use only (if applicable).

4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.

5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.

6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.

7. Enter the appropriate letter in the space provided.

8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:

—"New" means a new assistance award.

—"Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.

—"Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.

9. Name of Federal agency from which assistance is being requested with this application.

10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.

11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

12. List only the largest political entities affected (e.g., State, counties, cities).

13. Self-explanatory.

14. List the applicant's Congressional District and any District(s) affected by the program or project.

15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.

16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.

17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.

18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

BILLING CODE 4130-01-M

BUDGET INFORMATION — Non-Construction Programs

OMB Approval No. 0348-0044

SECTION A – BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B – BUDGET CATEGORIES

6 Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total (5)
	(1)	(2)	(3)	(4)	
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

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Standard Form 424A (4-88)
Prescribed by OMB Circular A-102

SECTION C - NON-FEDERAL RESOURCES				
(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS					
	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. NonFederal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT				
(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS (sum of lines 16 -19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION (Attach additional Sheets if Necessary)	
21. Direct Charges:	22. Indirect Charges:
23. Remarks	

SF 424A (4-88) Page 2
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INSTRUCTIONS FOR THE SF–424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A,B,C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A,B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary, Lines 1–4, Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in *Column* (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1–4, Columns (c) through (g)

For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5—Show the totals for all columns used.

Section B. Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1–4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a–i—Show the totals of Lines 6a to 6h in each column.

Line 6j—Show the amount of indirect cost.

Line 6k—Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)–(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7—Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal-Resources

Lines 8–11—Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a)—Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b)—Enter the contribution to be made by the applicant.

Column (c)—Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d)—Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e)—Enter totals of Columns (b), (c), and (d).

Line 12—Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13—Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14—Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15—Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16–19—Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20—Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21—Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22—Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23—Provide any other explanations or comments deemed necessary.

ASSURANCES—NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. 4728–4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (Pub. L. 88–352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681–1683, and 1685–1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. 6101–6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (Pub. L. 92–255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (Pub. L. 91–616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) sections 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd–3 and 290 ee–3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Pub. L. 91–646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. 1501–1508 and 7324–7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. 276a to 276a–7), the Copeland Act (40 U.S.C. 276c and 18 U.S.C. 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of section 102(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (Pub. L. 91–190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (Pub. L. 93–523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (Pub. L. 93–205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a–1 et seq.).

14. Will comply with Public Law 93–348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (Pub. L. 89–544, as amended, 7 U.S.C. 2131 et seq.)

pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

Signature of authorized certifying official

Title

Applicant organization

Date submitted

BILLING CODE 4130-01-M

Attachment B

U.S. Department of Health and Human Services
Certification Regarding Drug-Free Workplace Requirements
Grantees Other Than Individuals

By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

This certification is required by regulations implementing the Drug-Free Workplace Act of 1988, 45 CFR Part 76, Subpart F. The regulations, published in the May 25, 1990 Federal Register, require certification by grantees that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the Department of Health and Human Services (HHS) determines to award the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, HHS, in addition to any other remedies available to the Federal Government, may taken action authorized under the Drug-Free Workplace Act. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or governmentwide suspension or debarment.

Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios.)

If the workplace identified to HHS changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see above).

Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

"Controlled substance" means a controlled substance in Schedules I through V of the Controlled Substances Act (21 USC 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15).

"Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

"Employee" means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All "direct charge" employees; (ii) all "indirect charge" employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace; (2) The grantee's policy of maintaining a drug-free workplace; (3) Any available drug counseling, rehabilitation, and employee assistance programs; and, (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and, (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or, (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant (use attachments, if needed):

Place of Performance (Street address, City, County, State, ZIP Code)_____

Check ___ if there are workplaces on file that are not identified here.

Sections 76.630(c) and (d)(2) and 76.635(a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central receipt point is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517-D, 200 Independence Avenue, S.W., Washington, D.C. 20201.

DGMO Form#2 Revised May 1990

BILLING CODE 4130-01-C

Attachment C—Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

By signing and submitting this proposal, the applicant, defined as the primary participant in accordance with 45 CFR part 76, certifies to the best of its knowledge and belief that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal Department or agency;

(b) Have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

The inability of a person to provide the certification required above will not necessarily result in denial of participation in this covered transaction. If necessary, the prospective participant shall submit an explanation of why it cannot provide the certification. The certification or explanation will be considered in connection with the Department of Health and Human Services (HHS) determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

The prospective primary participant agrees that by submitting this proposal, it will include the clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transaction " provided below without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

(To Be Supplied to Lower Tier Participants)

By signing and submitting this lower tier proposal, the prospective lower tier participant, as defined in 45 CFR part 76, certifies to the best of its knowledge and belief that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

(b) Where the prospective lower tier participant is unable to certify to any of the above, such prospective participant shall attach an explanation to this proposal.

The prospective lower tier participant further agrees by submitting this proposal that it will include this clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions" without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Attachment D—Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant loan or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Statement for Loan Guarantee and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL "Disclosure Form to Report Lobbying," in accordance with its instructions.

Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature

Title

Organization

Date

BILLING CODE 4130-01-M

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change **For Material Change Only:** year _____ quarter ____ date of last report _____

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:
☐ Prime ☐ Subawardee Tier _____, *if known:* **Congressional District**, *if known:*	**Congressional District**, *if known:*
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, *if applicable* _____
8. Federal Action Number, *if known:*	9. Award Amount, *if known:* $
10. a. Name and Address of Lobbying Entity *(if individual, last name, first name, MI):*	b. Individuals Performing Services *(including address if different from No. 10a)* *(last name, first name, MI):*

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. Amount of Payment *(check all that apply)*:	13. Type of Payment *(check all that apply)*:
$ _____ ☐ actual ☐ planned	☐ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingent fee ☐ e. deferred ☐ f. other; specify: _____
12. Form of Payment *(check all that apply)*: ☐ a. cash ☐ b. in-kind; specify: nature _____ value _____	

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature: _____
Print Name: _____
Title: _____
Telephone No.: _____ **Date:** _____

Federal Use Only:

Authorized for Local Reproduction
Standard Form - LLL

BILLING CODE 4130-01-C

Attachment E

STATE SINGLE POINTS OF CONTACT

ALABAMA

Mrs. Moncell Thornell, State Single Point of Contact, Alabama Department of Economic & Community Affairs, 3465 Norman Bridge Road, Post Office Box 250347, Montgomery, Alabama 36125–0347, Telephone (205) 284–8905

ARIZONA

Ms. Janice Dunn, Arizona State Clearinghouse, 3800 N. Central Avenue, Fourteenth Floor, Phoenix, Arizona 85012, Telephone: (602) 280–1315

ARKANSAS

Mr. Joseph Gillesbie, Manager, State Clearinghouse, Office of Intergovernmental Service, Department of Finance and Administration, P.O. Box 3278, Little Rock, Arkansas 72203, Telephone (501) 371–1074

CALIFORNIA

Glenn Stober, Grants Coordinator, Office of Planning and Research, 1400 Tenth Street, Sacramento, California 95814, Telephone (916) 323–7480

COLORADO

State Single Point of Contact, State Clearinghouse, Division of Local Government, 1313 Sherman Street, room 520, Denver, Colorado 80203, Telephone (303) 866–2156

CONNECTICUT

Under Secretary, Attn: Intergovernmental Review coordinator, Comprehensive Planning Division, Office of Policy and Management, 80 Washington Street, Hartford, Connecticut 06106–4459, Telephone (203) 566–3410

DELAWARE

Francine Booth, State Single Point of Contact, Executive Department, Thomas Collins Building, Dover, Delaware 19903, Telephone (302) 736–3326

DISTRICT OF COLUMBIA

Lovetta Davis, State Single Point of Contact, Executive Office of the Mayor, Office of Intergovernmental Relations, Room 416, District Building, 1350 Pennsylvania Avenue, NW., Washington, DC 20004, Telephone (202) 727–9111

FLORIDA

Karen McFarland, Director, Florida State Clearinghouse, Executive Office of the Governor, Office of Planning and Budgeting, The Capitol, Tallahassee, Florida 32399–0001, Telephone: (904) 488–8114

GEORGIA

Charles H. Badger, Administrator, Georgia State Clearinghouse, 270 Washington Street, SW., Atlanta, Georgia 30334, Telephone (404) 656–3855

HAWAII

Mr. Harold S. Masumoto, Acting Director, Office of State Planning, Department of Planning and Economic Development, Office of the Governor, State Capitol—room 406, Honolulu, Hawaii 96813, Telephone (808) 548–5893, FAX (808) 548–8172

ILLINOIS

Tom Berkshire, State Single Point of Contact, Office of the Governor, State of Illinois, Springfield, Illinois 62706, Telephone (217) 782–8639

INDIANA

Frank Sullivan, Budget Director, State Budget Agency, 212 State House, Indianapolis, Indiana 46204, Telephone (317) 232–5610

IOWA

Steven R. McCann, Division for Community Progress, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309, Telephone (515) 281–3725

KENTUCKY

Debbie Anglin, State Single Point of Contact, Kentucky State Clearinghouse, 2nd Floor Capital Plaza Tower, Frankfort, Kentucky 40601, Telephone (502) 564–2382

MAINE

State Single Point of Contact, Attn: Joyce Benson, State Planning Office, State House Station #38, Augusta, Maine 04333, Telephone (207) 289–3261

MARYLAND

Mary Abrams, Chief, Maryland State Clearinghouse, Department of State Planning, 301 West Preston Street, Baltimore, Maryland 21201–2365, Telephone (301) 225–4490

MASSACHUSETTS

State Single Point of Contact, Attn: Beverly Boyle, Executive Office of Communities & Development, 100 Cambridge Street, room 1803, Boston, Massachusetts 02202, Telephone (617) 727–7001

MICHIGAN

Milton O. Waters, Director of Operations, Michigan Neighborhood Builders Alliance, Michigan Department of Commerce, Telephone (517) 373–7111

Please direct correspondence to:

Manager, Federal Project Review, Michigan Department of Commerce, Michigan Neighborhood Builders Alliance, P.O. Box 30242, Lansing, Michigan 48909, Telephone (517) 373–6223

MISSISSIPPI

Cathy Mallette, Clearinghouse Officer, Department of Finance and Administration, Office of Policy Development, 421 West Pascagoula Street, Jackson, Mississippi 39203, Telephone (601) 960–4280

MISSOURI

Lois Pohl, Federal Assistance Clearinghouse, Office of Administration, Division of General Services, P.O. Box 809, room 430, Truman Building, Jefferson City, Missouri 65102, Telephone (314) 751–4834

MONTANA

Deborah Stanton, State Single Point of Contact, Intergovernmental Review Clearinghouse, c/o Office of Budget and Program Planning, Capitol Station, room 202—State Capitol, Helena, Montana 59620, Telephone (406) 444–5522

NEVADA

Department of Administration, State Clearinghouse, Capitol Complex, Carson City, Nevada 89710, ATTN: John B. Walker, Clearinghouse Coordinator

NEW HAMPSHIRE

Jeffery H. Taylor, Director, New Hampshire Office of State Planning, Attn: Intergovernmental Review Process/James E. Bieber, 2½ Beacon Street, Concord, New Hampshire 03301, Telephone (603) 271–2155

NEW JERSEY

Barry Skokowski, Director, Division of Local Government Services, Department of Community Affairs, CN 803, Trenton, New Jersey 08625–0803, Telephone (609) 292–6613

Please direct correspondence and questions to:

Nelson S. Silver, State Review Process, Division of Local Government Services, CN 803, Trenton, New Jersey 08625–0803, Telephone (609) 292–9025

NEW MEXICO

Aurelia M. Sandoval, State Budget Division, DFA, room 190, Bataan Memorial Building, Santa Fe, New Mexico 87503, Telephone (505) 827–3640, FAX (505) 827–3006

NEW YORK

New York State Clearinghouse, Division of the Budget, State Capitol, Albany, New York 12224, Telephone (518) 474–1605

NORTH CAROLINA

Mrs. Chrys Baggett, Director, Intergovernmental Relations, N.C. Department of Administration, 116 W. Jones Street, Raleigh, North Carolina 27611, Telephone (919) 733–0499

NORTH DAKOTA

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OHIO

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Part IV

Department of Energy

10 CFR Part 707

Workplace Substance Abuse Programs at DOE Sites; Final Rule

DEPARTMENT OF ENERGY

10 CFR Part 707

Workplace Substance Abuse Programs at DOE Sites; Final Rule

AGENCY: Office of Procurement, Assistance and Program Management, Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) is establishing minimum requirements for DOE contractors to use in developing and implementing programs that deal with the use of illegal drugs by their employees and certain other individuals. Minimum requirements address: (1) Prohibition on the use, possession, sale, distribution, or manufacture of illegal drugs; (2) education and training; (3) testing of certain employees in sensitive positions; (4) employee assistance; (5) removal, discipline, treatment, and rehabilitation of employees; and (6) notification to DOE. The rule provides for drug testing for: (1) contractor employees in, and applicants for, testing designated positions at sites owned or controlled by DOE and operated under the authority of the Atomic Energy Act of 1954, as amended, and (2) individuals with unescorted access to the control areas of certain DOE reactors. The Department has determined that possible risks of serious harm to the environment and to public health, safety, and national security justify the imposition of a uniform rule establishing a baseline workplace substance abuse program, including drug testing.

EFFECTIVE DATE: August 21, 1992.

FOR FURTHER INFORMATION CONTACT: Juanita E. Smith, Office of Contractor Human Resource Management (PR-15), Department of Energy, at (202) 586-9033.

SUPPLEMENTARY INFORMATION:

I. General

The Department of Energy published in the **Federal Register** on July 3, 1991, a proposed regulation to create a new Part 707 of Title 10, Code of Federal Regulations, entitled "Workplace Substance Abuse Programs at DOE Facilities" (56 FR 30644).

DOE is issuing this rule under its broad authorities to carry out the purpose of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2012, 2013, 2051, 2061, 2165, 2201; the Energy Reorganization Act, 42 U.S.C. 5814, 5815; the Department of Energy Organization Act, 42 U.S.C. 7151, 7251, 7254, and 7256; and the Drug-Free Workplace Act of 1988, 41 U.S.C. 701 *et seq.*

Program requirements will include the following: training and education, testing of certain employees in sensitive positions, employee assistance, disciplinary measures for employees determined to have used illegal drugs in violation of this rule, and DOE actions in response to inadequate contractor programs. It is the intent of DOE to allow contractors a degree of flexibility in developing their programs; however, program components are subject to review and approval by DOE to assure that they meet the minimum baseline requirements.

Through implementation of the requirements of this rule, DOE expects to mitigate the potential for harm to the environment, public health and safety, and national security, and further reduce the possibility of accidents at DOE facilities by employees who use illegal drugs. Pursuant to Executive Order 12564, "Drug-Free Federal Workplace," DOE has implemented a Drug-Free Federal Workplace Program that includes testing provisions for Federal employees that are comparable to provisions in this rule. The final rule published today will assist DOE in assuring that contractor employees in sensitive and critical positions do not use illegal drugs.

Individual rights to protection and privacy were important considerations to DOE in the development of this rule. The program scope and requirements have been balanced to assure that any intrusiveness is minimized. The types of positions subject to testing under this program have been limited to those performing only the most sensitive or critical work having a direct effect on the environment, public health and safety, or national security. These positions are held by personnel representing less than 30 percent of all DOE contractor employees. Program elements and testing provisions included in this rule represent the minimum requirements necessary for DOE to implement a responsible program and establish reasonable measures to assure that employees in these positions perform their duties safely.

Approximately 65 percent of all contractor employees subject to testing under this program are currently tested under comparable requirements through programs administered by DOE contractors as a matter of corporate policy or by other Federal agencies. For these employees, DOE will not be imposing substantial additional requirements or costs. An objective of DOE in promulgating this rule is to promote a measure of uniformity and consistency in the existing programs of DOE contractors. DOE has made every effort to avoid any undue burdens on contractors and employees, particularly with regard to drug testing.

The rule will apply to all of DOE's management and operating contractors and certain other DOE selected contractors and subcontractors performing work at sites operated under the authority of the Atomic Energy Act of 1954, as amended; but drug testing provisions will apply only if those contractors and subcontractors have employees in positions subject to testing under the program.

The rule requires contractors to submit to DOE a written program that meets the rule's minimum requirements. All employees in testing designated positions will be subject to random testing for illegal drugs, and will also be subject to testing for illegal drugs upon reasonable suspicion or as a result of an occurrence, as defined in the rule. Applicants for testing designated positions and individuals with unescorted access to the control areas of certain DOE reactors will also be subject to testing under the conditions described in this part. DOE anticipates that a number of existing contractor drug-free workplace programs will meet or exceed the baseline requirements established by this part; such programs will be submitted to DOE for review and determination that they meet these baseline requirements.

In developing this proposed rule, DOE generally followed the models provided by related drug-free workplace programs, especially the program now in place for Federal employees under Executive Order 12564, "Drug-Free Federal Workplace," of September 15, 1986. This rule incorporates the requirements of the Drug-Free Workplace Act of 1988, 41 U.S.C. 701, *et seq.*, and the relevant implementing provisions of the Federal Acquisition Regulation (FAR): Subpart 23.5, section 52.223-5, and section 52.223-6; and Code of Federal Regulations (CFR): 48 CFR 23.5, 48 CFR 52.223-5, and 48 CFR 52.223-6. The Drug-Free Workplace Act requires certain entities that are awarded Government contracts for property or services of a value of $25,000 or more, and all individuals awarded contracts, to certify to the contracting agency that they will provide a drug-free workplace for the performance of the contract. Today's rule is consistent with such statutory requirements and the relevant provisions of the FAR.

Under the provisions of this rule, existing contracts will be modified, to the extent necessary, to ensure that the requirements set forth in the final rule are included as contract provisions. A

contract clause to be added to the Department of Energy Acquisition Regulation, 48 CFR part 9, and relating to this rule, is being published today in the Federal Register as an interim final rule, on which comments are invited.

This rule only relates to certain aspects of a workplace substance abuse program. Contractors are not relieved by this rule from any additional responsibilities they may have for law enforcement and security procedures, such as investigations, searches, and arrests for criminal violations, which are covered by other applicable laws, rules, and orders of appropriate governmental authorities.

II. DOE Response to Comments Received

In its Notice of Proposed Rulemaking (NOPR), DOE allowed a 60-day period for public comment. Two public hearings were also scheduled to take place within that 60-day period. One of the public hearings was canceled for lack of interest, as allowed in the original NOPR. (See 56 FR 35798, July 26, 1991.) The other public hearing was conducted as scheduled in Washington, DC, on July 29, 1991 where two interested persons presented views. In addition, a total of seventeen written comments were received from commenters that included contractors, unions, professional associations, public interest groups, and universities. The comments fell under relatively few general headings, and some commenters raised the some points as others. Following is a summary of the substantive comments, and the DOE response. References are to section numbers of the proposed rule.

Comment: One commenter stated the rule is Constitutionally dubious. It raises serious questions of violations of the Fourth Amendment and will subject contractors to unnecessary and costly litigation. The testing required under the rule is "governmental action" subject to the "reasonableness" standard of the Fourth Amendment. The governmental interests sought to be advanced by the rule do not rise above individuals' expectations of privacy.

Response: The Supreme Court has established that drug testing *per se* is not unconstitutional, and that drug testing programs can be designed so as not to infringe upon Fourth Amendment protections. See *National Treasury Employees Union* v. *Von Raab*, 489 U.S. 656, and *Skinner* v. *Railway Labor Executives' Association*, 489 U.S. 602, both decided on March 21, 1989. Since the Supreme Court's decisions in the Von Raab and Skinner cases, the clear trend of case law has been in favor of allowing drug testing of employees in sensitive positions, where there is a strong governmental interest to be protected or advanced and certain procedural safeguards are observed. The governmental interests that DOE seeks to protect or advance by this rule should be readily apparent. DOE, among other responsibilities, is charged with the development and production of all our nation's nuclear weapons and other functions vital to our national interests and security. The Department's activities in these areas could pose serious health, safety, environmental, or security threats if improperly carried out. The risks of harm, whether accidental or deliberate, are substantially increased if employees in sensitive positions use illegal drugs. In its most basic essentials, this rule is designed to address a legitimate security concern. DOE, in conjunction with the Department of Justice and other Federal agencies, continues to monitor its drug testing programs for compliance with the latest judicial interpretations. The Department is confident that the provisions of this rule meet the standards for Constitutionally valid drug testing, as set by the courts. Litigation costs incurred by a management and operating contractor in complying with a DOE contract requirement can be claimed for reimbursement under normal cost principles.

Comment: The scope of the rule is unclear; or, alternatively, the scope should be narrowed so as to exclude certain classes of contractors and subcontractors.

Response: The "scope" section of the rule (section 707.2) makes it clear that the rule applies to all "management and operating" contractors, and to other contractors and subcontractors that meet certain criteria. However, no contractor or subcontractor otherwise within the scope of the rule will be required to carry out the testing provisions of the rule unless some of its employees are in "testing designated positions" and performing "sensitive duties," as described in the rule. All contractors and subcontractors within the scope of the rule will be required to implement the non-testing provisions, *e.g.*, education and counseling.

Comment: Commenters indicated at least one contract clause will have to be added to the Department of Energy Acquisition Regulation before contractors can be expected to comply with this rule.

Response: A contract clause is being published today in the Federal Register as an interim final rule. Persons interested in or affected by this rule are invited to comment on the clause.

Comment: Proposed § 707.5(a)(1) requires contractors to prohibit "individuals in testing designated positions who are not free from the effects of the use of illegal drugs from entering or remaining on sites owned or controlled by DOE." This goes beyond § 707.14(b), which only requires that such individuals be removed from sensitive duties, and conflicts with the further requirement that such individuals be placed in non-testing designated positions, if possible, pending rehabilitation.

Response: Section 707.5(a)(1) has been amended to conform with the provisions of § 707.14(b).

Comment: Proposed section 707.5(a)(8) requires that an employee in a testing designated position report to the Medical Review Officer the use, pursuant to a valid prescription, of any of the drugs to be tested for and listed in § 707.11. This places too great a burden on individual employees, who may not know that certain drugs they are taking by prescription must be reported.

Response: DOE adopted this comment. Section 707.13(b) has been amended to allow an employee or applicant an opportunity to report use of prescription and over-the-counter drugs to the MRO when there has been a confirmed positive test result, and proposed § 707.5(a)(8) has been deleted.

Comment: In § 707.5(c), the contractor should be allowed to develop its program on employee sanctions without being tied to standards applicable to Federal employees.

Response: The reference to Federal employees has been removed. Each contractor will be allowed to apply its own disciplinary standards, but employees who are determined, for the first time, to have used illegal drugs may be offered an opportunity for rehabilitation, consistent with the contractor's policies. Like other aspects of the program, disciplinary provisions will be reviewed by the DOE for a determination that they meet baseline requirements.

Comment: Section 707.7(b)(3)(v), as proposed, could apply to persons who are only peripherally connected with activity involving hazardous material, or handling only minute amounts of such substances, and subject those persons to testing.

Response: The section has been renumbered as § 707.7(b)(3)(E) and revised to cover only personnel "directly engaged" in activity involving amounts of hazardous material sufficient to cause "significant harm" to the environment, national security, or public health and safety.

Comment: The list of reactors in § 707.7(c) should distinguish between those that are "operating" and those in "cold standby" or otherwise not operating.

Response: DOE considers that all these reactors can present an environmental or safety hazard or a security risk, and has not shortened the list or amended the section.

Comment: Section 707.9 ("Drug testing as a result of an occurrence") is vague and indefinite.

Response: DOE has expanded the definition of "occurrence" in § 707.4 to clarify this section.

Comment: In proposed § 707.10(a), the Site Medical Director must be able to delegate the decision for testing on reasonable suspicion to another physician.

Response: Reference to the "site medical director" has been replaced with "a physician from the site occupational medical department." In any event, the rule is written so as to allow, but not require, participation of a physician in the decision to conduct reasonable suspicion testing.

Comment: The Medical Review Officer should not be required to report employee non-cooperation to DOE security officials, as in proposed § 707.12(b)(1).

Response: The section has been amended to reassign this responsibility to contractor management.

Comment: An employee subject to urinalysis testing should be allowed to retain a portion of the urine sample for independent testing.

Response: If any employee were allowed to retain a portion of the urine sample, there would be no way to maintain a secure chain of custody for that retained sample. It would not, of course, affect the security of the chain of custody of the urine sample under the control of DOE. However, a new § 707.14(f) has been added to allow an individual who has been notified of a positive test result to request DOE to conduct a retest at a certified laboratory.

Comment: Several commenters objected strongly to the provision in § 707.14(b) of the Notice of Proposed Rulemaking which provided that in the event of a first time determination that an employee had used an illegal drug, the employee shall be offered a reasonable opportunity for rehabilitation and placed in a non-testing designated position during the rehabilitation, if such a position is available. One commenter said this requirement would require the contractor to reverse its well-established position of terminating employees who use drugs, including first-time drug users. Another commenter objected to the mandated action stating it would be unnecessarily restrictive of the contractor's personnel policies and not allow for facts in individual situations to influence the action taken. A third commenter also stated that contractors should have the right to determine the appropriate discipline for employees found in violation of the employer's substance abuse program and, in addition, the policy was inconsistent with "accountability" rules for management and operating contractors promulgated recently by DOE. In summary, the commenter said these rules specifically hold contractors accountable for actions by their employees, such as damage to government property, while under the influence of a prohibited substance.

Response: DOE recognizes that the requirement to allow a "second chance" pursuant to a first-time finding of use of illegal drugs may override the personnel policies of some contractors. These policies require that the employee be terminated, rather than offered an opportunity for treatment and return to duty, when it is determined that it is safe to be reinstated. The provision may appear inconsistent with the Department's responsibilities for safety and security at its facilities. In proposing its rule, DOE's primary objective was to establish minimum requirements to assure that contractor employees employed in safety or security sensitive positions do not use illegal drugs, consistent with its responsibility for the protection of public health and safety and national security. DOE sought to balance these concerns with minimum intrusion in both the individual's right to protection and due process and the contractor's exercise of discretion in determining the appropriate personnel action to take pursuant to a finding of illegal drug use.

DOE has reviewed carefully the comments received regarding mandatory rehabilitation and reemployment or job security opportunities that are proposed for contractor employees. The Department considered the arguments offered to defend the right of contractors to terminate an employee who tests positive for illegal drugs and not offer a chance for rehabilitation. Arguments in defense of offering a single opportunity for rehabilitation to an employee who is identified as having used illegal drugs through drug testing were also considered. DOE has determined that it can substantially meet its obligation to mitigate the risk of accidents and harm to national security through the requirement in the rule for immediate removal of an employee from a testing designated position who has been tested and found to have used illegal drugs. Thereafter, the contractor may apply its employment policies regarding rehabilitation of employees with a substance abuse problem. If the contractor offers employees the opportunity for rehabilitation, the contractor must place the employee in a non-testing designated position, or if there is no such position available, place the employee on sick, annual, or other leave to permit rehabilitation. Upon successful completion of rehabilitation and a determination by the site occupational medical department that the employee can safely return to work, the employee may be reinstated in the same or comparable position to that held prior to removal. In addition, contractors have the full range of disciplinary action available to them for those actions of employees that result from violations of workplace rules other than having an initial positive drug test.

Comment: Proposed § 707.14 does not provide employees with fundamental due process. A positive test will result in an automatic removal from duty, and an effective termination in situations where there is no non-sensitive job available.

Response: A removal from sensitive duties is imperative in the event of a positive test result, because of the grave risks presented by drug use by employees in testing designated positions. However, DOE has amended the rule to provide that the employee may be placed on sick, annual, or other leave status for periods sufficient to permit rehabilitation, so that an employee in this situation will not necessarily be terminated.

Comment: The requirement that employees who have made a successful rehabilitation be reinstated will be burdensome and costly to the contractors.

Response: The reinstatement provision of the rule is viewed by DOE to be within its statutory power and in the Department's interest. DOE believes that qualified and capable contractor employees are a valuable and essential resource at DOE facilities. When rehabilitation is offered by the contractor, reinstatement of an employee who successfully completes rehabilitation, and is determined by the site occupational medical department to be capable of safely performing sensitive duties, will avoid the unnecessary loss of an otherwise productive employee. Because a determination to return an employee to work is essentially a "fitness-for-duty"

determination, it is more appropriate for the site occupational medical department rather than the Medical Review Officer.

Comment: The comments from several labor unions implied that the rule did not clearly state that participation in a drug testing program is a condition of employment and, as such, is a mandatory subject of bargaining between affected contractors and their respective unions. Other commenters acknowledged that § 707.15 of the rule does address collective bargaining rights, but recommended that the one year time limit to complete negotiations be eliminated. These commenters expressed concern that contractors either would not be able to satisfy their legal duty to bargain over the complex issues involved in drug testing within the one year time frame required by the section, or that instances could arise where they might fail to obtain mutual consent to reopen bargaining agreements during the one year period. One commenter stated that unilateral implementation by the contractor, if the union(s) refuses to agree to provisions in the rule, would violate another Federal agency's requirement, presumably the National Labor Relations Board. Some contractors requested additional guidance to cover those instances where a union refuses to accept modifications to the labor agreement.

Response: DOE does not agree that the rule fails to permit negotiations over drug testing programs to take place. On the contrary, § 707.15 of the rule explicitly provides for collective bargaining over the impact on working conditions of the baseline requirements of the rule. Further, nothing in the rule prevents collective bargaining over contractor requirements that exceed the baseline program elements set forth in the rule. DOE also believes that one year generally is sufficient to complete negotiations. However, to provide for situations where the parties may not have reached agreement within that time period, DOE has modified the rule so that the contractor is expected to negotiate to impasse, which is defined to mean one year of good faith bargaining prior to implementing the necessary provisions without agreement, at which time the contractor will implement unilaterally. DOE is confident that such unilateral implementation would not violate precedents of the National Labor Relations Board interpreting section 8(a)(5) of the National Labor Relations Act (29 U.S.C. 158(a)(5)). The Board's precedents permit such unilateral action by an employer who has bargained in good faith to impasse, but also provide for appropriate response to that action by the union(s) involved.

Comment: Provisions of the proposed rule dealing with records and confidentiality are in potential conflict with statute and other regulations, particularly 42 U.S.C. 290dd–3 and 290ee–3 and 42 CFR part 2.

Response: DOE takes the view that the proposed rule could have been interpreted and implemented in conformity with those statutes and regulations. Nevertheless, to remove any ambiguity, DOE has adopted part of a commenter's suggested alternative.

That section now makes specific reference to the above-mentioned statutes and regulations, which are those most pertinent to the procedures prescribed in this part. DOE expects that this change will make little or no difference in the practical application and implementation of the rule. In addition, DOE has begun the process for establishing a system of records to maintain any documents generated in accordance with the provisions of this part.

In response to other comments and following a final review, DOE has made these additional changes in the final rule:

In the Notice of Proposed Rulemaking, § 707.5(b), DOE stated that each contractor would have to "comply with relevant requirements of the Drug-Free Workplace Act of 1988 (Pub. L. No. 100–690) and its implementing rules in the Federal Acquisition Regulation (FAR)." The NOPR did not, however, include the specific requirements of the Act or the relevant FAR sections. To eliminate confusion and aid contractors subject to this part, DOE has now incorporated in § 707.5(a) all minimum requirements that contractors and subcontractors must include as baseline elements of their programs. This does not add any new requirements that were not present in the NOPR, but it will eliminate the need for a cross-reference between regulations.

Section 707.7(c) of the proposed rule provided that an individual, who is not an employee, with unescorted access to a reactor control area would be precluded from such unescorted access in the event of a positive drug test. The rule has been clarified to permit such an individual unescorted access if the individual provides evidence of successful completion of a counseling or rehabilitation program, undergoes a drug test with a negative result, and has been evaluated by the site occupational medical department which determines that the individual may be safely permitted access to such a reactor control area. Upon a second positive drug test, the individual will be denied unescorted access for at least three years, and then may be permitted unescorted access only if DOE approves.

The definition of "hazardous material" has been refined from that in the proposed rule, which was considered by some commenters to be overbroad. As proposed, the definition would have brought within the testing programs employees only tangentially involved with minute quantities of substances that are hazardous only in much larger quantities or concentrations. The testing of these additional employees would have increased the cost and intrusiveness of contractors' plans without significantly improving protection of public health and safety. The new definition, drafted in consultation with DOE technical program offices, will clarify the types and quantities of substances covered by this rule.

In response to the comments from a professional association, DOE modified the definition of "Counseling" and provisions dealing with employee assistance, but did not adopt the suggestions of two commenters for an alternative definition of "Employee Assistance Program." DOE has made a minor editorial change to the definition, but believes that the definition is appropriate to DOE operations. The definition of "drug certification" also has been clarified.

DOE also has deleted the definition of and references to "permanent record book," and replaced it with "specimen chain of custody form," based upon comments provided by the Department of Health and Human Services. This was determined to be desirable because the "batch" chain of custody concept is no longer used. Rather, a multi-part specimen chain of custody form has been determined to be preferable. One copy of the form will be retained at the collection site and will contain the same information that would have been found in the permanent record book.

The rule is being clarified to incorporate into § 707.5 requirements for the individual to report any arrest for or conviction of a drug-related offense, consistent with DOE security requirements. In addition, the individual will have to report the results of any positive drug test that the individual may have taken, for example, as a result of military service. The rule is also being clarified to require the contractor to identify in the plan what actions, if any, will be taken regarding an individual in a testing designated position for an

arrest for or conviction of a drug-related offense.

References in the proposed rule to actions to be taken by the Head of Contracting Activity ("HCA") have been changed in this final rule to simply "DOE." A requirement that the HCA take certain actions was seen as too restrictive for a codified regulation.

A comparison of the final rule with the proposed rule will show that DOE made additional non-substantive refinements to the rule, largely editorial in nature, in response to public comments and following a final review. These changes were designed to make the rule more understandable to persons affected by it. The reasons for all changes, if not specifically explained above, should be apparent from the context of the rule.

III. Review Under Executive Order 12291

Under Executive Order 12291, agencies are required to determine whether rules are major rules as defined in the Order. DOE has reviewed this rule and has determined that it is not a major rule because: Implementing the additional human reliability requirements in this rule will not have an annual effect of $100 million or more on the economy; will not result in a major increase in costs or prices to consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises. Prior to publication, the rule was submitted to the Director of the Office of Management and Budget pursuant to Executive Order 12291. The Director has concluded his review.

IV. Review Under the Regulatory Flexibility Act

This rule was reviewed under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* DOE concluded that there was no need to prepare a regulatory flexibility analysis because the rule will affect only DOE contractors whose places of performance are at Government-owned or controlled sites operated under the authority of the Atomic Energy Act of 1954, as amended, and their subcontractors. It will not have a significant economic impact on a substantial number of small entities.

V. Review Under the National Environmental Policy Act

This rule is not a major action significantly affecting the quality of the human environment. The rule is part of an overall employee human reliability and standards of conduct program that deals only with requirements for certain DOE contractors and subcontractors to include specified minimum elements in a workplace substance abuse program. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

VI. Review under Executive Order 12778

Section 2 of Executive Order 12778 instructs each agency subject to Executive Order 12291 to adhere to certain requirements in promulgating new regulations and reviewing existing regulations. These requirements, set forth in sections 2(a) and (b)(2), include eliminating drafting errors and needless ambiguity, drafting the regulations to minimize litigation, providing clear and certain legal standards (whether they be engineering or performance standards), and promoting simplification and burden reduction. Agencies are also instructed to make every reasonable effort to ensure that the regulation: Specifies clearly any preemptive effect, effect on existing Federal law or regulation, and retroactive effect; describes any administrative proceedings to be available prior to judicial review and any provisions for the exhaustion of such administrative proceedings; and defines key terms. DOE certifies that today's proposal meets the requirements of sections 2(a) and (b) of Executive Order 12778.

VII. Review Under Executive Order 12612

The principal impact of this rule will be on government contractors and certain subcontractors and their employees. The rule is unlikely to have a substantial direct effect on the States, the relationship between the States and the Federal government, or the distribution of power and responsibilities among various levels of government. No Federalism assessment under Executive Order 12612 is required. Although the rule, at section 705.5(i), contains a provision for the preemption of conflicting State and local law, DOE believes preemption will be rare, if it occurs at all. The Atomic Energy Act of 1954, as amended, reserves exclusively to the Federal government the entire field of the development and production of this country's nuclear weapons, including the production of "special nuclear material" and the control of "source material" and "byproduct material," as well as the exclusive control of "restricted data," as all of those terms are defined in the Act. This rule provides for preemption only in the rare instance where a State or local requirement interferes with DOE's conduct of health and safety or security programs within Federal enclaves and concerning an exclusively Federal function. DOE is well aware that preemption of State law is a serious matter, that it is disfavored, and only to be exercised with the greatest prudence. In its Notice of Proposed Rulemaking, DOE explicitly sought comment on situations that may exist that would require preemption of State law. No such situations were mentioned by commenters.

VIII. Review Under the Paperwork Reduction Act

This rule imposes no additional paperwork burden on the public other than that already approved under OMB Control Number 1910–0600.

List of Subjects in 10 CFR Part 707

Classified information, Drug testing, Employee assistance programs, Energy, Government contracts, Health and safety, National security, Reasonable suspicion, Special nuclear material, Substance abuse.

Issued in Washington, DC, on July 15, 1992.

Berton J. Roth,

Acting Director, Office of Procurement, Assistance and Program Management.

For the reasons set forth above, DOE hereby amends chapter III of title 10 of the Code of Federal Regulations by adding a new part 707, to read as follows:

PART 707—WORKPLACE SUBSTANCE ABUSE PROGRAMS AT DOE SITES

Subpart A—General Provisions

Sec.

Subpart B—Procedures

Sec.

Sec.

Authority: 41 U.S.C. 701 *et seq.*; 42 U.S.C. 2012, 2013, 2051, 2061, 2165, 2201b, 2201i, and 2201p; 42 U.S.C. 5814 and 5815; 42 U.S.C. 7151, 7251, 7254, and 7256.

Subpart A—General Provisions

§ 707.1 Purpose.

The Department of Energy (DOE) promulgates this part in order to protect the environment, maintain public health and safety, and safeguard the national security. This part establishes policies, criteria, and procedures for developing and implementing programs that help to maintain a workplace free from the use of illegal drugs. It applies to DOE contractors and subcontractors performing work at sites owned or controlled by DOE and operated under the authority of the Atomic Energy Act of 1954, as amended, and to individuals with unescorted access to the control areas of certain DOE reactors. The procedures include detection of the use of illegal drugs by current or prospective contractor employees in testing designated positions.

§ 707.2 Scope.

(a) This part applies to the following contracts with DOE, at sites owned or controlled by DOE which are operated under the authority of the Atomic Energy Act of 1954, as amended:

(1) Management and operating contracts; and

(2) Other contracts or subcontracts with a value of $25,000 or more, and which have been determined by DOE to involve:

(i) Access to or handling of classified information or special nuclear materials;

(ii) High risk of danger to life, the environment, public health and safety, or national security; or

(iii) Transportation of hazardous materials to or from a DOE site.

(b) Individuals described in § 707.7 (b) and (c) will be subject to random drug testing; to drug testing as a result of an occurrence, as described in § 707.9; and to drug testing on the basis of reasonable suspicion, as described in § 707.10.

(c) Applicants for employment in testing designated positions will be tested in accordance with § 707.8.

§ 707.3 Policy.

It is the policy of DOE to conduct its programs so as to protect the environment, maintain public health and safety, and safeguard the national security. This policy is advanced in this rule by requiring contractors and subcontractors within its scope to adopt procedures consistent with the baseline requirements of this part, and to impose significant sanctions on individuals in testing designated positions or with unescorted access to the control areas of certain DOE reactors, who use or are involved with illegal drugs.

§ 707.4 Definitions.

For the purposes of this part, the following definitions apply:

Collection Site Person means a technician or other person trained and qualified to take urine samples and to secure urine samples for later laboratory analysis.

Confirmed Positive-Test means, for drugs, a finding based on a positive initial or screening test result, confirmed by another positive test on the same sample. The confirmatory test must be by the gas chromatography/mass spectrometry method.

Counseling means assistance provided by qualified professionals to employees, especially, but not limited to those employees whose job performance is, or might be, impaired as a result of illegal drug use or a medical-behavioral problem; such assistance may include short-term counseling and assessment, crisis intervention, referral to outside treatment facilities, and follow-up services to the individual after completion of treatment and return to work.

Drug Certification means a written assurance signed by an individual with known past illegal drug involvement, as a condition for obtaining or retaining a DOE access authorization, stating that the individual will refrain from using or being involved with illegal drugs while employed in a position requiring DOE access authorization (security clearance).

Employee Assistance means a program of counseling, referral, and educational services concerning illegal drug use and other medical, mental, emotional, or personal problems of employees, particularly those which adversely affect behavior and job performance.

Hazardous Material means any material subject to the placarding requirements of 49 CFR 172.504, table 1, and materials presenting a poison-inhalation hazard that must be placarded under the provisions of 49 CFR 172.505.

Illegal Drug means a controlled substance, as specified in Schedules I through V of the Controlled Substances Act, 21 U.S.C. 811, 812. The term "illegal drugs" does not apply to the use of a controlled substance in accordance with terms of a valid prescription, or other uses authorized by law.

Management and Operating Contract means an agreement for the operation, maintenance, or support, on behalf of the Government, of a Government-owned or controlled research, development, special production, or testing establishment wholly or principally devoted to one or more major programs of DOE.

Medical Review Officer (MRO) means a licensed physician, approved by DOE to perform certain functions under this part. The MRO is responsible for receiving laboratory results generated by an employer's drug testing program, has knowledge of illegal drug use and other substance abuse disorders, and has appropriate medical training to interpret and evaluate an individual's positive test result, together with that person's medical history and any other relevant biomedical information. For purposes of this part a physician from the site occupational medical department may be the MRO.

Occurrence means any event or incident that is a deviation from the planned or expected behavior or course of events in connection with any Department of Energy or Department of Energy-controlled operation, if the deviation has environmental, public health and safety, or national security protection significance. Incidents having such significance include the following, or incidents of a similar nature:

(1) Injury or fatality to any person involving actions of a Department of Energy contractor employee.

(2) Involvement of nuclear explosives under Department of Energy jurisdiction which results in an explosion, fire, the spread of radioactive material, personal injury or death, or significant damage to property.

(3) Accidental release of pollutants which results or could result in a significant effect on the public or environment.

(4) Accidental release of radioactive material above regulatory limits.

Random Testing means the unscheduled, unannounced urine drug testing of randomly selected individuals in testing designated positions, by a process designed to ensure that selections are made in a non-discriminatory manner.

Reasonable Suspicion means a suspicion based on an articulable belief that an employee uses illegal drugs, drawn from particularized facts and reasonable inferences from those facts, as detailed further in § 707.10.

Referral means the direction of an individual toward an employee assistance program or to an outside treatment facility by the employee assistance program professional, for assistance with prevention of illegal drug use, treatment, or rehabilitation from illegal drug use or other problems. Referrals to an employee assistance program can be made by the individual (self-referral), by contractor supervisors or managers, or by a bargaining unit representative.

Rehabilitation means a formal treatment process aimed at the resolution of behavioral-medical problems, including illegal drug use, and resulting in such resolution.

Special Nuclear Material has the same meaning as in section 11aa of the Atomic Energy Act of 1954 (42 U.S.C. 2014(aa)).

Specimen Chain of Custody Form is a form used to document the security of the specimen from time of collection until receipt by the laboratory. This form, at a minimum, shall include specimen identifying information, date and location of collection, name and signature of collector, name of testing laboratory, and the names and signatures of all individuals who had custody of the specimen from time of collection until the specimen was prepared for shipment to the laboratory.

Testing Designated Position names a position whose incumbents are subject to drug testing under this part.

Subpart B—Procedures

§ 707.5 Submission, approval, and implementation of baseline workplace substance abuse program.

(a) Each contractor subject to this part shall develop a written program consistent with the requirements of this part and the guidelines of the Department of Health and Human Services and subsequent amendments to those guidelines ("Mandatory Guidelines for Federal Workplace Drug Testing Programs," 53 FR 11970, April 11, 1988; hereinafter "HHS Mandatory Guidelines"), and applicable to appropriate DOE sites. Such a program shall be submitted to DOE for review and approval, and shall include at least the following baseline elements:

(1) Prohibition of the use; possession, sale, distribution, or manufacture of illegal drugs at sites owned or controlled by DOE;

(2) Plans for instruction of supervisors and employees concerning problems of substance abuse, including illegal drug use, and the availability of assistance through the employee assistance program and referrals to other resources, and the penalties that may be imposed upon employees for drug-related violations occurring on the DOE owned or controlled site;

(3) Provision for distribution to all employees engaged in performance of the contract on the DOE owned or controlled site of a statement which sets forth the contractor's policies prohibiting the possession, sale, distribution, or manufacture of illegal drugs at the DOE owned or controlled site. The statement shall include notification to all employees that as a condition of employment under the contract, the employee will:

(i) Abide by the terms of the statement; and

(ii) Notify the employer in writing of the employee's conviction under a criminal drug statute for a violation occurring on the DOE owned or controlled site no later than 10 calendar days after such conviction;

(4) Provision for written notification to the DOE contracting officer within 10 calendar days after receiving notice under paragraph (a)(3)(ii) of this section, from an employee or otherwise receiving actual notice of an employee's conviction of a drug-related offense;

(5) Provision for imposing one of the following actions, with respect to any employee who is convicted of a drug-related violation occurring in the workplace, within 30 calendar days after receiving such notice of conviction under paragraph (a)(4) of this section;

(i) Taking appropriate personnel action against such employee, up to and including termination; or

(ii) Offering such employee, consistent with the contractor's policies, an opportunity to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency. If the employee does not participate in such a rehabilitation program, the contractor must take appropriate personnel action, up to and including termination, in accordance with the contractor's policies.

(6) Commitment to make a good faith effort to maintain a workplace free of substance abuse through implementation of paragraphs (a)(1) through (a)(5) of this section.

(b) In addition, the following baseline elements must be included in programs developed by contractors that have identified testing designated positions (see section 707.7(b)):

(1) Notification to DOE of the positions subject to drug testing;

(2) Prohibition of individuals in testing designated positions who are not free from the use of illegal drugs from working in those positions;

(3) Sanctions for individuals in testing designated positions who violate the prohibitions of paragraphs (a)(1) or (b)(2) of this section;

(4) Provision for:

(i) Notification, at least 60 days in advance of initiating testing, to those individuals subject to drug testing, unless the contractor is currently conducting a testing program.

(ii) Urine drug analysis of applicants for testing designated positions before final selection for employment or assignment;

(iii) Random urine drug analysis for employees in testing designated positions;

(iv) Urine drug analysis for employees in testing designated positions on the basis of reasonable suspicion, as a result of an occurrence, or as a follow-up to rehabilitation; and

(v) Random urine drug analysis and urine drug analysis on the basis of reasonable suspicion or as the result of an occurrence, for any individual with unescorted access to the control areas of certain DOE reactors (see § 707.7(c)).

(vi) Written notice to the contractor by an employee in a testing designated position of a drug-related arrest or conviction, or receipt of a positive drug test result regarding that employee, as soon as possible but within 10 calendar days of such arrest, conviction, or receipt; and

(vii) Appropriate action, if any, to be taken regarding an employee who:

(A) is arrested for or convicted of a drug-related offense; or

(B) has a positive drug test result (consistent with § 707.14).

(5) Provision to employees of the opportunity for rehabilitation, consistent with the contractor's policies, under circumstances as provided in this part (see § 707.14(b));

(6) Immediate notification to DOE security officials whenever the circumstances in connection with procedures under this part raise a security concern as provided in DOE Orders, rules and regulations; such circumstances including, but are not necessarily limited to, a determination that an individual holding a DOE access authorization has used an illegal drug.

(c) Each contractor's written policy and procedures under this part shall comply with the requirements of 10 CFR part 710, "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Significant Quantities of Special Nuclear Material."

(d) Contractors are required to submit all subcontracts they believe to be

within the scope of this part to DOE for a determination as to whether the subcontract falls within the scope of this part. Subcontractors so determined to be within the scope of this part shall be required to agree to comply with its requirements, as a condition of eligibility for performing the subcontract work. Each subcontractor subject to this part shall submit its plan to the appropriate prime contractor for approval; the contractor shall be responsible for periodically monitoring the implementation of the subcontractor's program for effectiveness and compliance with this part.

(e) In reviewing each proposed workplace substance abuse plan, DOE shall decide whether the program meets the applicable baseline requirements established by this part. The responsible DOE official will reject proposed workplace substance abuse plans that are deemed not to meet the baseline requirements. DOE shall provide the contractor with a written notification regarding the decision as to the acceptability of the plan. Nothing in this rule is intended to prohibit any contractor subject to this part from implementing workplace substance abuse requirements additional to those of the baseline, including drug testing employees and applicants for employment in any position and testing for any illegal drugs. However, the contractor shall inform DOE of such additional requirements at least 30 days prior to implementation.

(f) DOE shall periodically review and evaluate each contractor's program, including the contractor's oversight of the covered subcontractors, to assure effectiveness and compliance with this part.

(g) Contractors or proposers will submit their program to DOE for review within 30 days of notification by DOE that the contract or proposed contract falls within the scope of this part. Workplace substance abuse programs, as provided in this part, shall be implemented within 30 days of approval by DOE. DOE may grant an extension to the notification or implementation period, as warranted by local conditions. Implementation may require changes to collective bargaining agreements as discussed in § 707.15 of this part.

(h) To assure consistency of application, DOE shall periodically review designated contracts and testing designated positions included in the workplace substance abuse plans approved by DOE. DOE will also periodically review implementation of programs conducted by prime contractors, to assure consistency of application among prime contracts (and subcontracts where appropriate) throughout DOE.

(i) This part preempts any State or local law, rule, regulation, order, or standard to the extent that:

(1) compliance with both the State or local requirement and any requirements in this part is not possible; or

(2) compliance with the State or local requirement is an obstacle to the accomplishments and execution of any requirement in this part.

§ 707.6 Employee assistance, education, and training.

Contractor programs shall include the following or appropriate alternatives:

(a) Employee assistance programs emphasizing preventive services, education, short-term counseling, coordination and referral to outside agencies, and follow-up. These services shall be available to all contractor on-site employees involved in the DOE contract. The contractor has no obligation to pay the costs of any individual's counseling, treatment, or rehabilitation beyond those services provided by the contractor's employee assistance program, except as provided for in the contractor's benefits programs. DOE undertakes no obligation to pay for any individual's counseling, rehabilitation, or treatment, unless specifically provided for by contract.

(b) Education and training programs for on-site employees on a periodic basis, which will include, at a minimum, the following subjects:

(1) For all on-site employees: Health aspects of substance abuse, especially illegal drug use; safety, security, and other workplace-related problems caused by substance abuse, especially illegal drug use; the provisions of this rule; the employer's policy; and available employee assistance services.

(2) For managers and supervisors:

(i) The subjects listed in paragraph (b)(1) of this section;

(ii) Recognition of deteriorating job performance or judgment, or observation of unusual conduct which may be the result of possible illegal drug use;

(iii) Responsibility to intervene when there is deterioration in performance, or observed unusual conduct, and to offer alternative courses of action that can assist the employee in returning to satisfactory performance, judgment, or conduct, including seeking help from the employee assistance program;

(iv) Appropriate handling and referral of employees with possible substance abuse problems, especially illegal drug use; and

(v) Employer policies and practices for giving maximum consideration to the privacy interests of employees and applicants.

§ 707.7 Random drug testing requirements and identification of testing designated positions.

(a)(1) Each workplace substance abuse program will provide for random testing for evidence of the use of illegal drugs of employees in testing designated positions identified in this section.

(2) Programs developed under this part for positions identified in paragraph (b)(3) of this section shall provide for random tests at a rate equal to 50 percent of the total number of employees in testing designated positions for each 12 month period. Employees in the positions identified in paragraphs (b)(1), (b)(2), and (c) of this section will be subject to random testing at a rate equal to 100 percent of the total number of employees identified, and those identified in paragraphs (b)(1) and (b)(2) of this section may be subject to additional drug tests.

(b) The testing designated positions subject to random drug testing are:

(1) Positions determined to be covered by the Personnel Security Assurance Program (PSAP), codified at 10 CFR part 710. PSAP employees will be subject to the drug testing standards of this part and any additional requirements of the PSAP rule.

(2) Positions which entail critical duties that require an employee to perform work which affords both technical knowledge of and access to nuclear explosives sufficient to enable the individual to cause a detonation (high explosive or nuclear), in what is commonly known as the Personnel Assurance Program (PAP). PAP employees will be subject to the drug testing standards of this part and any additional requirements of the PAP program.

(3) Positions identified by the contractor which entail duties where failure of an employee adequately to discharge his or her position could significantly harm the environment, public health or safety, or national security, such as:

(i) Pilots;

(ii) Firefighters;

(iii) Protective force personnel, exclusive of those covered in paragraphs (b)(1) or (b)(2) of this section, in positions involving use of firearms where the duties also require potential contact with, or proximity to, the public at large;

(iv) Personnel directly engaged in construction, maintenance, or operation of nuclear reactors; or

(v) Personnel directly engaged in production, use, storage, transportation, or disposal of hazardous materials sufficient to cause significant harm to the environment or public health and safety.

(4) Other positions determined by the DOE, after consultation with the contractor, to have the potential to significantly affect the environment, public health and safety, or national security.

(c) Each contractor shall require random testing of any individual, whether or not an employee, who is allowed unescorted access to the control areas of the following DOE reactors: Advanced Test Reactor (ATR); C Production Reactor (C); Experimental Breeder Reactor II (EBR–II); Fast Flux Test Facility (FFTF); High Flux Beam Reactor (HFBR); High Flux Isotope Reactor (HFIR); K Production Reactor (K); L Production Reactor (L); N Production Reactor (N); Oak Ridge Research Reactor (ORR); and P Production Reactor (P). A confirmed positive test shall result in such an individual being denied unescorted access. If such an individual is not an employee of the contractor, that individual may be granted unescorted access only after the individual meets the conditions established in § 707.14(d) of this part. If, after restoration of unescorted access, such an individual is determined to have used illegal drugs for a second time, unescorted access shall be denied for a period of not less than three (3) years. Such an individual thereafter shall be granted unescorted access only upon a determination by DOE that a grant of unescorted access to the individual presents no unacceptable safety or security risk. If such an individual is an employee, that individual is subject to the other requirements of this part, including appropriate disciplinary measures.

(d) A position otherwise subject to testing under this part may be exempted from such testing if it is within the scope of another comparable Federal drug testing program, as determined by DOE, after consultation with the contractor, to avoid unnecessary multiple tests.

§ 707.8 Applicant drug testing.

An applicant for a testing designated position will be tested for the use of illegal drugs before final selection for employment or assignment to such a position. Provisions of this part do not prohibit contractors from conducting drug testing on applicants for employment in any position.

§ 707.9 Drug testing as a result of an occurrence.

When there is an occurrence which is required to be reported to DOE by the contractor, under contract provisions incorporating applicable DOE Orders, rules, and regulations, it may be necessary to test individuals in testing designated positions, or individuals with unescorted access to the control areas of the DOE reactors listed in § 707.7(c), for the use of illegal drugs, if such individuals could have caused or contributed to the conditions which caused the occurrence. For an occurrence requiring immediate notification or reporting as required by applicable DOE Orders, rules, and regulations, the contractor will require testing as soon as possible after the occurrence but within 24 hours of the occurrence, unless DOE determines that it is not feasible to do so. For other occurrences requiring notifications to DOE as required by applicable DOE Orders, rules, and regulations, the contractor may require testing.

§ 707.10 Drug testing for reasonable suspicion of illegal drug use.

(a)(1) It may be necessary to test any employee in a testing designated position, or individuals with unescorted access to the control areas of the DOE reactors listed in § 707.7(c), for the use of illegal drugs, if the behavior of such an individual creates the basis for reasonable suspicion of the use of illegal drugs. Two or more supervisory or management officials, at least one of whom is in the direct chain of supervision of the employee, or is a physician from the site occupational medical department, must agree that such testing is appropriate. Reasonable suspicion must be based on an articulable belief that an employee uses illegal drugs, drawn from particularized facts and reasonable inferences from those facts.

(2) Such a belief may be based upon, among other things:

(i) Observable phenomena, such as direct observation of:

(A) The use or possession of illegal drugs; or

(B) The physical symptoms of being under the influence of drugs;

(ii) A pattern of abnormal conduct or erratic behavior;

(iii) Arrest for a conviction of a drug related offense, or the identification of the individual as the focus of a criminal investigation into illegal drug possession use, or trafficking;

(iv) Information that is either provided by a reliable and credible source or is independently corroborated;

(v) Evidence that an employee has tampered with a drug test; or

(vi) Temperature of the urine specimen is outside the range of 32.5–37.7 degrees centigrade or 90.5–99.8 degrees Fahrenheit.

(b) The fact that an employee had a confirmed positive test for the use for the use of illegal drugs at some prior time, or has undergone a period of rehabilitation or treatment, will not, in and of itself, be grounds for testing on the basis of reasonable suspicion.

(c) The requirements of this part relating to the testing for the use of illegal drugs are not intended to prohibit the contractor from pursuing other existing disciplinary procedures or from requiring medical evaluation of any employee exhibiting aberrant or unusual behavior.

§ 707.11 Drugs for which testing is performed.

Where testing is performed under this part, at a minimum, contractors will be required to test for the use of the following drugs or classes of drugs: marijuana; cocaine; opiates; phencyclidine; and amphetamines. However, when conducting reasonable suspicion or occurrence testing, the contractor may test for any drug listed in Schedules I or II of the Controlled Substances Act.

§ 707.12 Specimen collection, handling and laboratory analysis for drug testing.

(a) Procedures for providing urine specimens must allow individual privacy, unless there is reason to believe that a particular individual may alter or substitute the specimen to be provided. Contractors shall utilize a chain of custody procedure for maintaining control and accountability from point of collection to final disposition of specimens, and testing laboratories shall use appropriate cutoff levels in screening specimens to determine whether they are negative or positive for a specific drug, consistent with the HHS Mandatory Guidelines (see § 707.5(a)). The contractor shall ensure that only testing laboratories certified by the Department of Health and Human Services, under subpart C of the HHS Mandatory Guidelines are utilized.

(b)(1) If the individual refuses to cooperate with the urine collection (e.g., refusal to provide a specimen, or to complete paperwork), then the collection site person shall inform the MRO and shall document the non-cooperation on the specimen chain of custody form. The MRO shall report the failure to cooperate to the appropriate management authority, who shall report

to DOE if the individual holds an access authorization. Individuals so failing to cooperate shall be treated in all respects as if they had been tested and had been determined to have used an illegal drug. The contractor may apply additional sanctions consistent with its disciplinary policy.

(2) The collection site person shall ascertain that there is a sufficient amount of urine to conduct an initial test, a confirmatory test, and a retest, in accordance with the HHS Mandatory Guidelines. If there is not a sufficient amount of urine, additional urine will be collected in a separate container. The individual may be given reasonable amounts of liquid and a reasonable amount of time in which to provide the specimen required. The individual and the collection site person must keep the specimen in view at all times. When collection is complete, the partial specimens will be combined in a single container. In the event that the individual fails to provide a sufficient amount of urine, the amount collected will be noted on the "Urine Sample Custody Document." In this case, the collection site person will telephone the individual's supervisor who will determine the next appropriate action. This may include deciding to reschedule the individual for testing, to return the individual to his or her work site and initiate disciplinary action, or both.

§ 707.13 Medical review of results of tests for illegal drug use.

(a) All test results shall be submitted for medical review by the MRO. A confirmed positive test for drugs shall consist of an initial test performed by the immunoassay method, with positive results on that initial test confirmed by another test, performed by the gas chromatography/mass spectrometry method (GC/MS). This procedure is described in paragraphs 2.4 (e) and (f) of the HHS Mandatory Guidelines.

(b) The Medical Review Officer will consider the medical history of the employee or applicant, as well as any other relevant biomedical information. When there is a confirmed positive test result, the employee or applicant will be given an opportunity to report to the MRO the use of any prescription or over-the-counter medication. If the MRO determines that there is a legitimate medical explanation for a confirmed positive test result, consistent with legal and non-abusive drug use, the MRO will certify that the test results do not meet the conditions for a determination of use of illegal drugs. If no such certification can be made, the MRO will make a determination of use of illegal drugs. Determinations of use of illegal drugs will be made in accordance with the criteria provided in the Medical Review Officer Manual issued by the Department of Health and Human Services [DHHS Publication No. (ADM) 88–1526].

§ 707.14 Action pursuant to a determination of illegal drug use.

(a) When an applicant for employment has been tested and determined to have used an illegal drug, processing for employment will be terminated and the applicant will be so notified.

(b)(1) When an employee who is in a testing designated position has been tested and determined to have used an illegal drug, the contractor shall immediately remove that employee from the testing designated position; if such employee also holds, or is an applicant for, an access authorization, then the contractor shall immediately notify DOE security officials for appropriate adjudication. If this is the first determination of use of illegal drugs by that employee (for example, the employee has not previously signed a DOE drug certification, and has not previously tested positive for use of illegal drugs), the employee may be offered a reasonable opportunity for rehabilitation, consistent with the contractor's policies. If rehabilitation is offered, the employee will be placed in a non-testing designated position, which does not require a security clearance, provided there is such an acceptable position in which the individual can be placed during rehabilitation; if there is no acceptable non-testing designated position, the employee will be placed on sick, annual, or other leave status, for a reasonable period sufficient to permit rehabilitation. However, the employee will not be protected from disciplinary action which may result from violations of work rules other than a positive test result for illegal drugs.

(2) Following a determination by the site occupational medical department, after counseling or rehabilitation, that the employee can safely return to duty, the contractor may offer the employee reinstatement, in the same or a comparable position to the one held prior to the removal, consistent with the contractor's policies and the requirements of 10 CFR part 710. Failure to take the opportunity for rehabilitation, if it has been made available, for the use of illegal drugs, will require significant disciplinary action up to and including removal from employment under the DOE contract, in accordance with the contractor's policies. Any employee who is twice determined to have used illegal drugs shall in all cases be removed from employment under the DOE contract. Also, if an employee who has signed a DOE drug certification violates the terms of the certification, DOE shall conduct a timely review of the circumstances of such violation, and the individual's continued eligibility for a DOE access authorization shall be determined under the provisions of 10 CFR part 710, "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Significant Quantities of Special Nuclear Material."

(c) An employee who has been removed from a testing designated position because of the use of illegal drugs may not be returned to such position until that employee has:

(1) Successfully completed counseling or a program of rehabilitation;

(2) Undergone a urine drug test with a negative result; and

(3) Been evaluated by the site occupational medical department, which has determined that the individual is capable of safely returning to duty.

(d) An individual who is not an employee of a contractor who has been denied unescorted access because of the use of illegal drugs may not have the unescorted access reinstated until that individual has:

(1) Provided evidence of successful completion of counseling or a program of rehabilitation;

(2) Undergone a urine drug test with a negative result; and

(3) Been evaluated by the site occupational medical department, which has determined that the individual is capable of being permitted unescorted access to a reactor control area.

(e) If a DOE access authorization is involved, DOE must be notified of a contractor's intent to return to a testing designated position an employee removed from such duty for use of illegal drugs. Positions identified in § 707.7(b)(1) and (2) will require DOE approval prior to return to a testing designated position.

(f) An individual who has been notified of a positive test result may request a retest of the same sample at the same or another certified laboratory. The individual shall bear the costs of transportation and/or testing of the specimen. The contractor will inform employees of their right to request a retest under the provisions of this paragraph.

(g) After an employee determined to have used illegal drugs has been returned to duty, the employee shall be subject to unannounced drug testing, at intervals, for a period of 12 months.

§ 707.15 Collective bargaining.

When establishing drug testing programs, contractors who are parties to collective bargaining agreements will negotiate with employee representatives, as appropriate, under labor relations laws or negotiated agreements. Such negotiation, however, cannot change or alter the requirements of this rule because DOE security requirements themselves are non-negotiable under the security provisions of DOE contracts. Employees covered under collective bargaining agreements will not be subject to the provisions of this rule until those agreements have been modified, as necessary; provided, however, that if one year after commencement of negotiation the parties have failed to reach agreement, an impasse will be determined to have been reached and the contractor will unilaterally implement the requirements of this rule.

§ 707.16 Records.

(a) Confirmed positive test results shall be provided to the Medical Review Officer and other contractor and DOE officials with a need to know. Any other disclosure may be made only with the written consent of the individual.

(b) Contractors shall maintain maximum confidentiality of records related to illegal drug use, to the extent required by applicable statutes and regulations (including, but not limited to, 42 U.S.C. 290dd–3, 42 U.S.C. 290ee–3, and 42 CFR part 2). If such records are sought from the contractor for criminal investigations, or to resolve a question or concern relating to the Personnel Assurance Program certification or access authorization under 10 CFR part 710, any applicable procedures in statute or regulation for disclosure of such information shall be followed. Moreover, owing to DOE's express environmental, public health and safety, and national security interests, and the need to exercise proper contractor oversight, DOE must be kept fully apprised of all aspects of the contractor's program, including such information as incidents involving reasonable suspicion, occurrences, and confirmed test results, as well as information concerning test results in the aggregate.

(c) Unless otherwise approved by DOE, the contractors shall ensure that all laboratory records relating to positive drug test results, including initial test records and chromatographic tracings, shall be retained by the laboratory in such a manner as to allow retrieval of all information pertaining to the individual urine specimens for a minimum period of five years after completion of testing of any given specimen, or longer if so instructed by DOE or by the contractor. In addition, a frozen sample of all positive urine specimens shall be retained by the laboratory for at least six months, or longer if so instructed by DOE.

(d) The contractor shall maintain as part of its medical records copies of specimen chain of custody forms.

(e) The specimen chain of custody form will contain the following information:

(1) Date of collection;

(2) Tested person's name;

(3) Tested employee/applicant's social security number or other identification number unique to the individual;

(4) Specimen number;

(5) Type of test (random, applicant, occurrence, reasonable suspicion, follow-up, or other);

(6) Temperature range of specimen;

(7) Remarks regarding unusual behavior or conditions;

(8) Collector's signature; and

(9) Certification signature of specimen provider certifying that specimen identified is in fact the specimen the individual provided.

§ 707.17 Permissible actions in the event of contractor noncompliance.

Actions available to DOE in the event of contractor noncompliance with the provisions of this part or otherwise performing in a manner inconsistent with its approved program include, but are not limited to, suspension or debarment, contract termination, or reduction in fee in accordance with the contract terms.

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Part V

Department of Energy

10 CFR Part 707

Workplace Substance Abuse Programs at DOE Sites; Proposed Rule

DEPARTMENT OF ENERGY

Office of Procurement, Assistance and Program Management

10 CFR Part 707

Workplace Substance Abuse Programs at DOE Sites

AGENCY: Department of Energy.

ACTION: Notice of proposed rulemaking and public hearing; request for comment.

SUMMARY: The Department of Energy (DOE) proposes to amend its final rule establishing Workplace Substance Abuse Programs at DOE sites through this Notice of Proposed Rulemaking (NOPR). The proposed rulemaking would ensure comprehensive substance abuse programs at DOE sites, including programs to address misuse and abuse of alcohol, as well as the use of illegal drugs. Minimum requirements address: (1) Prohibition on the misuse or abuse of alcohol; (2) education and training; (3) employee assistance; (4) discipline, treatment, and/or rehabilitation or removal of employees; and (5) notification to DOE. In addition, for employees and other individuals performing health or safety-sensitive functions at sites owned or controlled by DOE, including individuals with unescorted access to the control areas of certain DOE reactors, contractors would be required to conduct performance related random, reasonable suspicion, and occurrence testing for misuse or abuse of alcohol. The possible risks of serious harm to the environment and to public health and safety justify the imposition of restrictions relating to misuse or abuse of alcohol on individuals who perform health or safety-sensitive functions.

DATES: Written comments (six copies) must be received by September 21, 1992. A public hearing will be held beginning at 9:30 a.m. local time and ending at 4:30 p.m., unless concluded earlier, at Washington, DC, on August 28, 1992, unless there are not a sufficient number of advance requests to present views, in which event the hearing will be canceled. Requests to speak at the hearing must be received by 4:30 p.m. on August 21, 1992.

ADDRESSES: Written comments (six copies) and requests to speak at a public hearing are to be submitted to the Director, Office of Contractor Human Resource Management, Department of Energy, Washington, DC 20585. The public hearing will be held in room GJ-015, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585. Each person to be heard is requested to bring ten copies of that person's statement. In the event that any person wishing to testify cannot meet this requirement, alternative arrangements can be made with the Office of Contractor Human Resource Management in advance by requesting permission, in the letter or telephone request, to make an oral presentation..

Relevant reference materials, a transcript of the public hearing, and the entire rulemaking record, will be available for inspection between the hours of 9 a.m., and 4 p.m., Monday through Friday except Federal holidays, at the following address: DOE Freedom of Information Reading Room, United States Department of Energy, room 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6020.

FOR FURTHER INFORMATION CONTACT: Juanita E. Smith at (202) 586-9033.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Department of Energy (DOE) today proposes to amend its final rule, published in today's **Federal Register**, that establishes a baseline for contractor programs to address substance abuse by (1) employees in testing designated positions at sites owned or controlled by DOE, and (2) other individuals with unescorted access to the control areas of certain DOE reactors. Also published in today's **Federal Register** is an interim final rule that would amend the Department of Energy Acquisition Regulations to require contractors to implement the requirements of this part. The final rule deals primarily with the use of illegal drugs. This proposed amendment would require such contractors to include alcohol misuse or abuse provisions within their Workplace Substance Abuse Programs, in order to assure comprehensive substance abuse prevention at DOE sites. DOE is proposing this rule under its broad authorities to carry out the purposes of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2012, 2013, 2051, 2061, 2165, 2201; the Energy Reorganization Act, 42 U.S.C. 5814, 5815; and the Department of Energy Organization Act, 42 U.S.C. 7151, 7251, 7254, and 7256. The possible risks of serious harm to the environment and to public health and safety as a result of alcohol misuse or abuse justify the imposition of the additional alcohol misuse and abuse requirements. This program includes training and education, testing, employee assistance, and disciplinary measures as well as sanctions for inadequate DOE contractor programs.

Through implementation of this component of the Workplace Substance Abuse Program, DOE expects to mitigate the potential for harm to the environment and to public health and safety, and further reduce the possibility of accidents at DOE sites by employees who misuse or abuse alcohol. The program elements contained in this proposed rule will assist DOE in assuring that contractor employees and other individuals performing health or safety-sensitive functions do not misuse or abuse alcohol while performing such functions. Impairment resulting from alcohol misuse or abuse is well documented. Scientific evidence is conclusive that cognitive and physicial task performance decreases as a result of the misuse or abuse of alcohol. Recent studies conducted on behalf of the Nuclear Regulatory Commission indicate that the misuse and abuse of alcohol is a serious and pervasive workplace problem. (See Barnes, *et al.*, Fitness for Duty in the Nuclear Power Industry: A Review of Technical Issues (1988) NUREG/CR-5227, U.S. Nuclear Regulatory Commission, Washington, DC; Moore *et al.*, Fitness for Duty in the Nuclear Power Industry: A Review of Technical Issues (1989) NUREG/CR-5227, Supplement 1, U.S. Nuclear Regulatory Commission, Washington, DC. These documents are available for review in the Department's reading rooms in the Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 and the National Atomic Museum, Public Document Room, Building 20358, Wyoming Avenue, SE., Kirtland Air Force Base, Albuquerque, NM 87115.)

DOE believes that the potential effects resulting from alcohol misuse or abuse at both production and research and development sites represent a level of risk that is not compatible with the nature of work performed at these sites. The risk of alcohol misuse or abuse by employees at DOE sites warrants preventive action and intervention by DOE to ensure protection of the environment and public health and safety. The program will emphasize education and training, counseling, and employee assistance, as well as deterrence and detection of individuals who misuse or abuse alcohol.

Individual rights to protection and privacy are important to DOE and were major considerations in the development of this proposed rule. The program scope and requirements have been balanced to assure that intrusion

on these rights is minimized. The types of positions subject to testing under this program have been limited to only those performing the most sensitive or critical work, with potential for having a direct effect on the environment or public health and safety. These positions represent less than 30 percent of all DOE contractor employees. Program standards and testing provisions included in this rule represent the minimum requirements necessary for DOE to implement a responsible program and establish reasonable measures to assure that employees in these positions perform their duties safely.

The proposed rule would require contractors to include in their written programs, in addition to the minimum workplace substance abuse requirements currently set forth at 10 CFR part 707, an alcohol misuse or abuse component, including education, testing, and employee assistance programs. Contractors to be covered by the proposed alcohol component would include those contractors who are already subject to the requirements of 10 CFR part 707. The individuals to be covered by this rule, those performing health or safety-sensitive functions, are likely to be the same individuals who encumber testing designated positions, as currently provided in part 707—those individuals who perform work at sites owned or controlled by DOE and who occupy positions affording the potential to cause direct and/or immediate harm to the environment, to public health and safety, or to national security. Individuals performing health or safety-sensitive functions would be subject to testing for misuse or abuse of alcohol (a) on a random basis while performing the health or safety-sensitive functions, (b) upon reasonable suspicion, or (c) as a result of an occurrence. In developing this proposed rule, DOE has used as a model the rules of the Nuclear Regulatory Commission (NRC) for its licensees (10 CFR part 26).

II. Elements of an Alcohol Misuse and Abuse Program Relating to Contractor Employees

A. Requirements

Each contractor program would be required to assure that individuals performing health or safety-sensitive functions (including those with unescorted access to the control areas of certain DOE reactors) who enter or remain on a DOE site do not misuse or abuse alcohol. (See definition in § 707.4.)

Included is a requirement that an individual who performs health or safety-sensitive functions must report, in writing, an alcohol-related arrest as soon as possible but within 10 calendar days of such an arrest. DOE currently requires analogous reporting for security purposes through its management directives, including completion of a standard government-wide personnel security questionnaire and a continuing obligation on individuals with security clearances to report arrests for crimes involving a fine of $100 or more or imprisonment. DOE believes that health and safety concerns are as important as security concerns, and therefore that collection of similar information for individuals who perform health or safety-sensitive functions is necessary. DOE is well aware that an arrest, in itself, is not dispositive of whether a crime has been committed or whether the individual should be precluded from performing his or her duties. Moreover, disciplinary action would not necessarily be taken as a result of such an arrest. However, given the sensitivity of the functions being performed, arrest information could be useful in identifying an individual with a serious alcohol-related problem, and helping that individual in obtaining assistance. More importantly, it could assist in removing a troubled employee from a function that could result in great harm if improperly performed.

B. Education, Training, and Employee Assistance

The proposed rule would require that the contractors include alcohol misuse and abuse education in their periodic training programs for employees, managers, and supervisors. This educational effort will familiarize employees with the program. It will also prepare managers and supervisors for the tasks they must perform effectively in order to make the program work properly.

The proposed rule would require contractors to offer employee assistance, including a provision for counseling and referral to outside agencies.

C. Testing for Alcohol

The proposed rule would provide for alcohol testing on a random basis while an individual is performing health or safety-sensitive functions, upon "reasonable suspicion," and for an "occurrence." In developing the proposed rule, DOE consulted with the Department of Transportation, the Department of Health and Human Services, the Nuclear Regulatory Commission, and the National Aeronautics and Space Administration. DOE intends to continue consulting with those agencies to assure consistency, to the extent practicable, among Federal alcohol testing programs.

The proposed rule would require individuals performing health or safety-sensitive functions to abstain from the use of alcohol for at least five hours prior to a scheduled work tour. This is consistent with the requirements of the Nuclear Regulatory Commission for comparably situated individuals. However, other Federal agencies have established differing abstention periods for alcohol for individuals who perform health or safety-sensitive functions. For example, the Federal Aviation Administration currently requires pilots to abstain from the use of alcohol for eight hours prior to flight. Other Transportation agencies require an abstention period of four hours. DOE seeks the views of the public on whether the appropriate period of abstention should be four, five, or eight hours, or some other period.

The proposed rule would provide for alcohol testing by an evidential breath testing device (EBT) to determine breath alcohol concentration. For each screening test, a breath specimen would be collected. Test procedures are discussed in new § 707.15 of the proposed rule. In cases in which the initial test using an EBT indicates a breath alcohol concentration of 0.04 percent or greater, the proposed rule would require a confirmatory breath test. Confirmatory breath tests can be performed on the same EBT that indicated the initial positive reading. The proposed rule does not provide for review of positive alcohol breath test results by a Medical Review Officer (MRO) as is required for positive drug tests. The reason for this is that, unlike drug tests, there are no specimens that are susceptible to retesting, nor are there similar potential problems with chain of custody. There is nothing for the MRO to review from a medical standpoint other than the printout from the EBT. However, if the individual is unable to provide an adequate breath sample, any documentation supporting a medical condition which would prevent the individual from providing such a sample will be provided to the site occupational medical department for review. DOE is aware that there are some prescription and over-the-counter medicines that contain alcohol, and that proper use of these legal substances may result in a positive alcohol test. Nevertheless, DOE has proposed that any individual with an alcohol concentration of 0.04 or higher, no matter how attained, will be deemed incapable of performing a health or safety-sensitive function, and therefore

impaired by alcohol within the meaning of this rule.

In establishing the 0.04 minimum cut-off level, DOE has relied primarily on C. Moore, *et al.*, "Use of a 0.04% BAC Cutoff Level for Alcohol Testing," in Fitness for Duty in the Nuclear Power Industry: A Review of Technical Issues (1989) NUREG/CR–5227, Supplement 1, U.S. Nuclear Regulatory Commission, Washington, DC. This document is available for review in the Department's reading rooms in the Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 and the National Atomic Museum, Public Document Room, Building 20358, Wyoming Avenue, SE., Kirtland Air Force Base, Albuquerque, NM 87115.

Scientific studies suggest that consumption of alcohol resulting in an alcohol concentration of 0.04 or above results in impairment. However, DOE solicits comments on whether the proposed alcohol concentration of 0.04 is the appropriate standard, or whether the standard should be lower, given the sensitivity of the functions at issue. DOE also solicits comments on what action, if any, should be taken if an individual has an alcohol concentration lower than 0.04, for example, between 0.02 and 0.04.

Section 707.8 proposes the conduct of performance related random alcohol tests at a rate of 50 percent of the total number of employees performing health or safety-sensitive functions; except for those employees serving in positions covered by the Personnel Security Assurance Program or the Personnel Assurance Program, or individuals with unescorted access to the control areas of certain reactors who will be tested at the rate of 100 percent, consistent with the NRC testing rate for comparably situated individuals. DOE seeks comments on the proposed random alcohol testing rates and any documentation of deterrence or detection at any other rate.

DOE is requiring use of an alcohol testing form. In order to assure standardization among DOE contractors and subcontractors, DOE intends to develop a form that must be used by all contractors and subcontractors subject to this part.

D. Action Pursuant to a Determination of Alcohol Misuse or Abuse

The proposed rule would require, as a function of the facts and circumstances, certain disciplinary actions by the contractor in response to a determination of alcohol misuse or abuse. For purposes of this rule, an individual who refuses to take an alcohol test may be subject to appropriate disciplinary action. An employee performing a health or safety-sensitive function, who has a positive breath test, would be removed from that function, and, under certain conditions, from the position the employee occupies. For a first time determination of misuse or abuse of alcohol, the employee may be offered a reasonable opportunity for rehabilitation consistent with the contractor's policies. However, disciplinary measures, including permanent removal for subsequent misuse or abuse of alcohol, may be applied by the contractor. An individual permitted unescorted access to the control areas of certain reactors will not be permitted such access after the first determination of misuse or abuse of alcohol until the individual meets the requirements specified in the rule, including successful completion of counseling, a negative breath test, and an evaluation by the site occupational medical department. The proposed rule would provide for specific notice to DOE security officials in the case of an individual who was determined to have misused or abused alcohol, if that individual has, or is an applicant for, an access authorization. Continued eligibility for such an access authorization is subject to determination under 10 CFR part 710.

The proposed rule also would require alcohol testing information to be held confidential, and would permit the release of information relating to a positive alcohol test to certain individuals, on a need to know basis. These include DOE officials, the contractor, the individual, and any decisionmaker in a lawsuit, grievance, or other procedure relating to a positive alcohol test by that individual.

III. Contractor Performance

Future performance of contractors will be evaluated in part by their effectiveness and success in implementing this rule. Noncompliance with the requirements of the rule may subject the contractor to existing contractual remedies available in the Federal procurement regulations.

IV. Review Under Executive Order 12291

Under Executive Order 12291, agencies are required to determine whether or not proposed rules are major rules as defined in the Order. DOE has reviewed this proposed rule and has determined that it is not a major rule because: Implementing the additional human reliability requirements proposed in this rule will not have an annual effect of $100 million or more on the economy; will not result in a major increase in costs or prices to consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises. The proposal was submitted to the Director of the Office of Management and Budget pursuant to Executive Order 12291. The Director has concluded his review.

V. Review Under the Regulatory Flexibility Act

The proposed rule was reviewed under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* DOE has concluded that there is no need to prepare a regulatory flexibility analysis because, if promulgated, the rule will affect only DOE contractors performing work pursuant to the Atomic Energy Act whose places of performance are at Government-owned or controlled sites and their subcontractors, and will not have significant economic impact on a substantial number of small entities.

VI. Review Under Executive Order 12778

Section 2 of Executive Order 12778 instructs each agency subject to Executive Order 12291 to adhere to certain requirements in promulgating new regulations and reviewing existing regulations. These requirements, set forth in sections 2 (a) and (b)(2), include eliminating drafting errors and needless ambiguity, drafting the regulations to minimize litigation, providing clear and certain legal standards (whether they be engineering or performance standards), and promoting simplification and burden reduction. Agencies are also instructed to make every reasonable effort to ensure that the regulation: Specifies clearly any preemptive effect, effect on existing Federal law or regulation, and retroactive effect; describes any administrative proceedings to be available prior to judicial review and any provisions for the exhaustion of such administrative proceedings; and defines key terms. DOE certifies that today's proposal meets the requirements of sections 2 (a) and (b) of Executive Order 12778.

VII. Review Under the National Environmental Policy Act

This rule is not a major action significantly affecting the quality of the human environment. The rule is part of an overall employee human reliability and standards of conduct program that deals only with a requirement for

certain DOE contractors and subcontractors performing work pursuant to the Atomic Energy Act, to include certain minimum elements in a workplace substance abuse program. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

VIII. Review Under Executive Order 12612

The principal impact of this rule will be on government contractors and certain subcontractors and their employees. The rule is unlikely to have a substantial direct effect on the States, the relationship between the States and the Federal Government, or the distribution of power and responsibilities among various levels of government. No Federalism assessment under Executive Order 12612 is required.

IX. Review Under the Paperwork Reduction Act

The proposed rule imposes no additional paperwork burden on the public other than that already approved under OMB Control Number 1910–0600.

X. Comment and Hearing Procedures

A. Written Comments

The text of 10 CFR part 707 as it would be amended by this Notice of Proposed Rulemaking is available from the Office of Contractor Human Resource Management, Department of Energy, Washington, DC 20585 (202–586–9033).

Interested persons are invited to participate in this rulemaking by submitting data, views, or arguments with respect to the proposed rule set forth in this notice. Comments should be submitted to the address for the Director of the Office of Contractor Human Resource Management, which is given in the beginning of this notice. The envelope and written comments submitted should be identified with the designation "CAA" ("Contractor Alcohol Abuse"). Six copies should be submitted.

All comments received on or before the date specified in the beginning of this notice and all other relevant information will be considered by DOE before taking final action on this proposed rule.

Any person submitting information which that person believes to be confidential and which may be exempt by law from public disclosure should submit one complete copy, as well as six copies from which the information claimed to be confidential has been deleted. DOE reserves the right to determine the confidential status of the information or data and to treat them according to its determination. This procedure is set forth in 10 CFR 1004.11.

B. Public Hearing

DOE will hold a public hearing on the proposed rule as specified at the beginning of this notice. Any person who has an interest in the proposed rule, or who is a representative of a group or class of persons having an interest in it, may make a request for an opportunity to make an oral presentation. Such a request to speak at the hearing should be directed to the Director of the Office of Contractor Human Resource Management at the address given in the ADDRESSES section of this notice and must be received by 4:30 p.m., local time, on the date specified in the DATES section.

The person making the request should describe briefly his or her interest in the proceeding. The person should also provide a telephone number where the person may be reached. Persons requesting an opportunity to offer testimony should bring ten copies of their statements to the hearing.

DOE reserves the right to select the persons to be heard at the hearing, to schedule the respective presentations, and to establish the procedures governing the conduct of the hearing. The length of each presentation is limited to 10 minutes.

List of Subjects in 10 CFR Part 707

Alcohol, Classified information, Drug testing, Employee assistance programs, Energy, Government contracts, Health and safety, National security, Reasonable suspicion, Special nuclear material, Substance abuse.

Issued in Washington, DC, on July 15, 1992.

Berton J. Roth,

Acting Director, Office of Procurement, Assistance and Program Managment.

For the reasons set forth in the preamble, DOE proposes to amend part 707 of title 10 of the Code of Federal Regulations as set forth below.

PART 707—WORKPLACE SUBSTANCE ABUSE PROGRAMS AT DOE SITES

1. The authority citation for part 707 continues to read as follows:

Authority: 41 U.S.C. 701 *et seq.*; 42, U.S.C. 2012, 2013, 2051, 2061, 2165, 2201b, 2201i, and 2201p; 42 U.S.C. 5814 and 5815; 42 U.S.C. 7151, 7251, 7254, and 7256.

§ 707.1 [Amended]

2. Section 707.1 is amended by adding the phrase "and from the misuse or abuse of alcohol" after the phrase "illegal drugs" in the second sentence; in the last sentence by removing the period and adding the following: ", and (ii) misuse or abuse of alcohol by individuals performing health or safety-sensitive functions. This part will also require individuals who perform health or safety-sensitive functions to abstain from the use of alcohol for at least five hours prior to a scheduled working tour and during any working tour."

3. Section 707.2 is amended by redesignating paragraph (b) as (b)(1) and changing the references in (b)(1) from § 707.9 and 707.10 to 707.10 and 707.11 respectively; by adding paragraph (b)(2); and by changing the reference in (c) from § 707.8 to 707.9. Paragraph (b)(2) is set forth below:

§ 707.2 Scope.

* * * * *

(b) * * *

(2) Individuals described in § 707.8 (b) and (c) will be subject to random alcohol testing while performing health or safety-sensitive functions; and to alcohol testing as a result of an occurrence, as described in § 707.10; and on the basis of reasonable suspicion, as described in section 707.11

* * * * *

§ 707.3 [Amended]

4. Section 707.3 is amended in the final sentence by adding before the final period at the end thereof: " * * *, and on individuals performing health or safety-sensitive functions or with unescorted access to the control areas of certain DOE reactors who misuse or abuse alcohol".

§ 707.4 Definitions.

5. Section 707.4 is amended by adding in the proper alphabetical order definitions for the terms Air Blank, Alcohol, Alcohol Concentration, Alcohol Testing Form, Breath Alcohol Technician (BAT), Collection Site, Evidential Breath Testing Device, Health or Safety-Sensitive Function, Misuse or Abuse of Alcohol, and Substance Abuse to read as follows:

§ 707.4 Definitions.

Air Blank means a reading by an evidential breath testing device (EBT) of ambient air containing no alcohol.

Alcohol means any beverage, mixture, or preparation containing ethyl alcohol (including any medication).

Alcohol Concentration is a measure of the alcohol in a volume of breath, expressed in terms of grams of alcohol per 210 liters of breath. [For example, an alcohol concentration of 0.04 means that there is 0.04 gram (four one-hundredths of one gram) of alcohol in 210 liters of expired deep lung air.]

Alcohol Testing Form is a form used to document the breath test result. This form, at a minimum, shall include identifying information, including the sequential test number, the individual's identifying date and signature, date and location of the test, name signature of the breath alcohol technician, and the test results.

Breath Alcohol Technican (BAT) means a person who instructs and assists individuals in the testing process and operates the evidential breath testing device.

Collection Site means the location at which individuals subject to alcohol or drug testing are required to provide breath samples and/or urine specimens.

* * * * *

Evidential Breath Testing Device means a device which conforms to the model standards for evidential breath testing devices of the National Highway Traffic Safety Administration (NHTSA), capable of providing a printed copy of each breath test result. The model standards are available in the DOE Reading Room, room 1E–190, 1000 Independence Ave., SW., Washington, DC 20585, (202) 586–6020.

* * * * *

Health or Safety-Sensitive Function means a function with duties that, if not properly discharged, could directly and/or immediately cause significant harm to public health or safety, including any function that requires unescorted access to control areas of certain DOE reactors. (For purposes of this part, persons are considered to be performing a health or safety-sensitive function during any period when they are actually performing such functions or can be asked or directed to perform those functions. Such persons may be tested prior to, during, or following the performance of such functions.)

* * * * *

Misuse or Abuse of Alcohol means performing a health or safety-sensitive function while, (1) having an alcohol concentration at or above 0.04, (2) consuming alcohol within five hours of a scheduled working tour or during any working tour, or (3) being otherwise impaired by alcohol.

For purposes of this part, a person who refuses to take an alcohol test will be considered to have an alcohol concentration at or above 0.04.

* * * * *

Substance Abuse means the misuse or abuse of alcohol or the use of illegal drugs.

* * * * *

§ 707.4 [Amended]

6. Section 707.4 is further amended by adding the sentence "The collection site person may also be the BAT for a particular site." at the end of the definition of *Collection Site Person;* by adding the sentence "For alcohol, a confirmed positive is a breath test result of 0.04 or greater alcohol concentration, performed on an evidential breath testing device and repeated on the same or another evidential breath testing device with a breath test result of 0.04 or greater alcohol concentration." at the end of the definition for *Confirmed Positive Test;* by adding the phrase ", misuse or abuse of alcohol" after the phrase "illegal drug use" in the definitions of *Counseling, Employee Assistance,* and *Referral* (both occurrences); in the definition of *Random Testing,* by adding the paragraph designator (1) after "unannounced" and adding "or (2) alcohol breath testing of individuals performing health or safety-sensitive functions or having access to the control areas of certain DOE reactors," after "designated positions,"; in the definition of *Reasonable Suspicion,* by adding the phrase "or misuse or abuse of alcohol" after "illegal drugs" and changing the section reference from 707.10 to 707.11; and by adding the phrase "and alcohol misuse or abuse" after "illegal drug use" in the definition of *Rehabilitation.*

7. Section 707.5 is amended by adding the phrase "and the misuse or abuse of alcohol" after "illegal drug use" and adding the phrase "or alcohol-related" after "drug use" in paragraph (a)(2); by adding the phrase "the use, misuse, or abuse of alcohol or" after "policies prohibiting" in the first sentence of paragraph (a)(3); by adding the phrase "for an alcohol-related offense or" after "employee's conviction" in paragraph (a)(3)(ii); by adding the phrase "or alcohol-related" after "conviction of a drug-related" in paragraph (a)(4); by adding the phrase "or alcohol-related" after "drug-related" in paragraph (a)(5); by removing the word "drug" and adding the word "substance" before "abuse assistance" in the first sentence of (a)(5)(ii); by adding the phrase "or that have individuals performing health or safety-sensitive functions (see § 707.8(b))" before the colon in the introductory text to paragraph (b); by redesignating paragraphs (b)(3) through (6) as (b)(4) through (7), respectively; by adding new paragraph (b)(3); by adding the phrase "alcohol or" after "subject to" in paragraphs (b)(1) and (b)(5)(i); by adding the phrase "or who perform health or safety-sensitive functions" after "designated positions" in paragraph (b)(4); by adding the phrase "and random alcohol breath tests for individuals who perform health or safety-sensitive functions" after "designated positions" in (b)(5)(iii); by adding the phrase "and alcohol breath tests for individuals who perform health or safety-sensitive functions" after "designated positions" in paragraph (b)(5)(iv); by adding the phrases "Alcohol breath tests," and "and § 707.8(c)" at the beginning and end, respectively, of paragraph (b)(5)(v); in paragraph (b)(5)(vi), by adding the paragraph designator (A) after the phrase "by an employee" and adding the phrase "or (B) who perform health or safety-sensitive functions of an alcohol-related arrest or conviction," after "that employee,"; by adding the phrase "or alcohol-related" after "drug-related" in paragraph (b)(5)(vii)(A); by changing the reference from § 707.14 to § 707.16 and 707.17 in paragraph (b)(5)(vii)(B); by changing the reference from § 707.14 to § 707.16 and 707.17 in paragraph (b)(6); by adding the phrase "or has misused or abused alcohol" at the end of paragraph (b)(7); by adding the phrase "alcohol or" before "drug testing" in the fourth sentence of paragraph (e); by changing the reference in the last sentence of paragraph (g) from section 707.15 to § 707.18; and by adding the phrase ", positions with health or safety-sensitive functions," after the word "contracts" in the first sentence of paragraph (h). Newly added paragraph (b)(3) is set forth below:

§ 707.5 Submission, approval, and implementation of a baseline workplace substance abuse program.

* * * * *

(b) * * *

(3) Prohibition of misuse or abuse of alcohol by individuals performing health or safety-sensitive functions;

* * * * *

§ 707.6 [Amended]

8. Section 707.6 is amended by removing the phrase ", especially illegal drug use" in paragraph (b)(1) (both occurrences) and by adding the phrase "misuse or abuse of alcohol or" before the words "illegal drug use" in (b)(2)(ii) and (iv).

§ 707.7 [Amended]

9. Section 707.7 is amended by changing the reference in the third sentence of paragraph (c) from § 707.14(d) to § 707.16(d).

10. In subpart B, the following sections are redesignated:

§§ 707.15–707.17 [Redesignated as §§ 707.18–707.20]

a. Sections 707.15 through 707.17 are redesignated as §§ 707.18 through 707.20.

§ 707.14 [Redesignated as § 707.16]

b. Section 707.14 is redesignated as § 707.16.

c. Sections 707.8 through 707.13 are redesignated as §§ 707.9 through 707.14.

10a. A new § 707.8 is added to read as follows:

§ 707.8 Performance related random alcohol testing requirements.

(a) Each workplace substance abuse program shall provide for random testing for alcohol for individuals performing health or safety-sensitive functions and for individuals with unescorted access to the control areas of certain DOE reactors.

(1) Individuals are considered to be performing a health or safety-sensitive function during any period when they are actually performing such functions or can be asked or directed to perform those functions.

(2) Individuals subject to testing under this section may be tested prior to, during, or following the performance of such health or safety-sensitive functions.

(3) Programs developed under this part for positions identified in (b)(3) of this section shall provide for performance related random tests at a rate equal to 50 percent of the total number of employees performing health or safety-sensitive functions for each 12 month period. Employees in the positions identified in paragraphs (b)(1), (b)(2), and (c) of this section will be subject to performance related random testing at a rate equal to 100 percent of the total number of employees identified, and those identified in paragraphs (b)(1) and (b)(2) of this section may be subject to additional tests.

(b) Positions containing health or safety-sensitive functions subject to performance related random alcohol testing are:

(1) Positions determined to be covered by the Personnel Security Assurance Program (PSAP), codified at 10 CFR part 710. PSAP employees will be subject to the alcohol testing standards of this part and any additional requirements of the PSAP rule.

(2) Positions which entail critical duties that require an employee to perform work which affords both technical knowledge of and access to nuclear explosives sufficient to enable the individual to cause a detonation (high explosive or nuclear), in what is commonly known as the Personnel Assurance Program (PAP). PAP employees will be subject to the alcohol testing standards of this part and any additional requirements of that program.

(3) Positions identified by the contractor which entail duties where failure of an employee adequately to discharge his or her position could directly and/or immediately cause harm to the environment or public health and safety, such as:

(i) Pilots;

(ii) Firefighters;

(iii) Protective force personnel, exclusive of those covered in paragraphs (b)(1) and (b)(2) of this section, in positions involving use of firearms where the duties also require potential contact with, or proximity to, the public at large;

(iv) Personnel directly engaged in construction, maintenance, or operation of nuclear reactors; or

(v) Personnel directly engaged in production, use, storage, transportation, or disposal of hazardous materials sufficient to cause significant harm to the environment or public health and safety.

(4) Other positions determined by DOE, after consultation with the contractor, to have the potential to significantly affect the environment, or public health and safety.

(c) Each contractor shall require random testing of any individual, whether or not an employee, who is allowed unescorted access to the control areas of the following DOE reactors: Advanced Test Reactor (ATR); C Production Reactor (C); Experimental Breeder Reactor II (EBR–II); Fast Flux Test Facility (FFTF); High Flux Beam Reactor (HFBR); High Flux Isotope Reactor (HFIR); K Production Reactor (K); L Production Reactor (L); N Production Reactor (N); Oak Ridge Research Reactor (ORR); and P Production Reactor (P). A confirmed positive test shall result in such an individual being denied unescorted access. If such an individual is an employee, that individual is subject to the other requirements of this part, including appropriate disciplinary measures.

(d) A position otherwise subject to testing under this part may be exempted from such testing if it is within the scope of another comparable Federal alcohol testing program (e.g., Nuclear Regulatory Commission, Department of Transportation), as determined by DOE, after consultation with the contractor, to avoid unnecessary multiple tests.

11. Redesignated § 707.10 is amended by revising the section heading to add "and alcohol" after "Drug", by adding the paragraph designator "(a) Drug testing." before the first paragraph, and by adding paragraph (b) as set forth below:

§ 707.10 Drug and alcohol testing as a result of an occurrence.

(a) *Drug Testing.* * * *

(b) *Alcohol testing.* When there is an occurrence which is required to be reported to DOE by the contractor, under contract provisions incorporating applicable DOE Orders, rules, and regulations, it may be necessary to test individuals performing health or safety-sensitive functions, or individuals with unescorted access to the control areas of the DOE reactors listed in § 707.8(c) for the misuse or abuse of alcohol, if such individuals could have caused or contributed to the conditions which caused the occurrence. For an occurrence requiring immediate notification or reporting as required by applicable DOE Orders, rules, and regulations, the contractor will require testing as soon as possible after the occurrence but within one hour of the occurrence, unless DOE determines that it is not feasible to do so. For other occurrences requiring notification to DOE as required by applicable DOE Orders, rules, and regulations, the contractor may require testing.

12. Redesignated § 707.11 is amended by revising the section heading to add "and alcohol" after "Drug" and "or misuse or abuse of alcohol" after "drug use", by adding the paragraph heading "Drug testing." before the first paragraph, by redesignating paragraph (a) as paragraph (a)(1), by beginning a new paragraph, designated as (2), with the words "Such a belief may be based upon, among other things:", by redesignating subparagraphs (a)(1) through (a)(6) as (a)(2)(i) through (a)(2)(vi), respectively, by redesignating paragraph (b) as paragraph (a)(3), by adding a new paragraph (b), and by adding the phrase "or for the misuse or abuse of alcohol" after the words "illegal drugs" in paragraph (c). New paragraph (b) is set forth below.

§ 707.11 Drug and alcohol testing for reasonable suspicion of illegal drug use or misuse or abuse of alcohol.

* * * * *

(b) *Alcohol testing.*

(1) It may be necessary to test any employee encumbering a position entailing health or safety-sensitive functions, as defined in § 707.8(b), or with unescorted access to the control areas of the DOE reactors listed in § 707.8(c), for the misuse or abuse of alcohol, if the behavior of such an individual creates the basis for

reasonable suspicion of the misuse or abuse of alcohol. Two or more supervisory or management officials, at least one of whom is in the direct chain of supervision of the employee, or is a physician from the site occupational medical department, must agree that such testing is appropriate. Reasonable suspicion must be based on an articulable belief that an employee misuses or abuses alcohol, drawn from particularized facts and reasonable inferences from those facts.

(2) Such a belief may be based upon, among other things:

(i) Observable phenomena, such as direct observation of:

(A) The use of alcohol on-site; or

(B) The physical symptoms of being under the influence of alcohol;

(ii) A pattern of abnormal conduct or erratic behavior;

(iii) Arrest or conviction for an alcohol-related offense;

(iv) Information that is either provided by a reliable and credible source or is independently corroborated; or

(v) Evidence that an employee has tempered with, or attempted to tamper with, an alcohol test.

(3) The fact that an employee had a confirmed positive alcohol test at some prior time, or has undergone a period of rehabilitation or treatment, will not, in and of itself, be grounds for testing on the basis of reasonable suspicion.

* * * * *

13. §§ 707.15 and 707.17 are added to read as follows:

§ 707.15 Alcohol testing requirements and procedures.

(a) *Collection Site Requirements.* (1) All necessary equipment, personnel, and materials for breath testing shall be provided at the collection site. Any forms used shall be approved or provided by DOE.

(2) The collection site shall be an enclosed room or area affording visual and aural privacy to the individual being tested to the maximum extent practicable.

(3) No unauthorized persons shall be permitted access to the collection site at any time when testing is occurring.

(4) A mobile collection facility, such as a van equipped for alcohol testing, may be used as a collection site.

(5) In unusual or emergency circumstances, a test may be conducted at a place other than a designated collection site.

(6) The breath alcohol technician (BAT) shall supervise only one person's use of the EBT at a time. The BAT shall not leave the testing site while the preparation for, and testing of, a given person are in progress.

(b) *Alcohol testing procedures.* (1) The BAT shall be trained to proficiency in the operation of the evidential breath testing device (EBT) he or she is using and in the alcohol testing procedures of this part.

(i) Proficiency shall be demonstrated by successful completion of a course of instruction, which at a minimum, provides training in the principles of EBT methodology, operation, and calibration checks; the fundamentals of breath analysis for alcohol content; and the procedures required in this part for obtaining a breath specimen, interpreting, and recording EBT results.

(ii) Courses of instruction that meet standards of the National Highway Traffic Safety Administration (NHTSA) model course or a course approved by a state department of health or other relevant state agency may be used to demonstrate BAT proficiency.

(iii) The course of instruction shall include documentation that the BAT has demonstrated competence in the operation of the specific EBT he/she will use.

(iv) Any BAT who will perform an external calibration check of an EBT shall be trained to proficiency in conducting the check on the particular model of EBT, to include practical experience and demonstrated competence in preparing the breath alcohol simulator or alcohol standards, maintenance and calibration of the EBT.

(v) The BAT shall receive additional training, as needed, to ensure proficiency concerning new or additional devices or changes in technology that he or she will use.

(vi) The employer shall maintain documentation of the training and proficiency test of each BAT for a period of five years.

(vii) To the extent practicable, the supervisor of a particular employee shall not act as a BAT for that employee.

(2)(i) An EBT used to conduct breath tests shall be inspected, maintained, and calibrated in accordance with factory specifications, specific to the circumstances in which the EBT is used. These functions shall be performed by the manufacturer or a maintenance representative certified by the EBT's manufacturer or an appropriate state agency. Records of all such inspections, maintenance, and calibrations shall be maintained by the contractor for a period of five years, and shall be made available to DOE upon request.

(A) When not in use, the EBT shall be stored in a secure space to which unauthorized persons are denied access.

(B) Any EBT taken out of service because of failure to adequately conduct air blanks should not be used for testing until a check of external calibration is conducted and the EBT is found to be within tolerance limits.

(ii) Such an EBT, independently or in conjunction with a separate printer, shall be capable of the following:

(A) Numbering breath tests consecutively, and printing the appropriate number on the breath test result;

(B) Printing in triplicate or alternatively, three consecutive identical copies;

(C) Taking an air blank prior to or following each collection of a breath sample; and

(D) Performing an external calibration check.

(iii) In order to be used in alcohol testing subject to this part, and EBT shall be a quality assurance plan developed by the manufacturer.

(A) The plan shall designate the method or methods to be used to perform external calibration checks of the device.

(B) The plan shall specify the minimal intervals for performing external calibration checks of the device. Intervals shall be specified for different frequencies of use, temperatures, and contexts of operation (*e.g.*, stationary or mobile use).

(C) The plan shall specify the tolerance on an external calibration check within which the EBT is regarded to be in proper calibration.

(D) The plan shall specify inspection, maintenance, and calibration requirements and intervals for the device.

(E) Documentation of the contractor's compliance with the quality assurance plan of the manufacturer of each EBT used for alcohol testing under this part, including records of the results of external calibration checks, shall be maintained for a period of five years.

(F) For a plan to be regarded as valid for purposes of this paragraph, the manufacturer shall have submitted the plan to NHTSA for review and have received NHTSA approval of the plan.

(3) An individual who is required to take an alcohol breath test shall report to a designated collection site. The following procedures shall be followed:

(i) The BAT will require the individual to provide positive identification, such as a photo identification. The individual may request similar identification from the BAT.

(ii) The BAT shall explain the testing procedures to the individual. The BAT shall advise the individual not to eat, drink, put any object or substance in his or her mouth, or belch, in order to avoid

an artificially high alcohol reading. The test shall be conducted regardless of whether the individual has followed the instructions above. If the individual fails to follow the instructions, the BAT shall note that on the testing form.

(iii) The individual and the BAT both shall sign, date, and note the number of the breath test on an alcohol testing form. Refusal to sign the form shall be noted by the BAT on the form. Refusal to provide a breath sample, to provide an adequate breath sample, or to otherwise cooperate with the collection process shall be considered to be a refusal to take the test, and shall be noted by the BAT on the form. The contractor shall be notified by the BAT of an individual's refusal to take a test, and the contractor shall take appropriate disciplinary action.

(iv) Before the first test is administered, the BAT shall ensure that the EBT registers 0.00 on an air blank. If the EBT reading in above 0.00, the BAT shall conduct one more air blank. Testing shall not proceed unless a 0.00 reading is obtained in the second air blank.

(A) The BAT shall open on individually-sealed mouthpiece, within view of the individual to be tested, and attach it to the EBT in accordance with the manufacturer's instructions. The individual shall then be instructed to blow firmly into the mouthpiece for at least six seconds or until the EBT indicates that a sufficient breath sample has been obtained.

(B) After the initial test is administered, the BAT shall ensure that the EBT registers 0.00 on an air blank. The test is valid only if this check results in a reading of 0.00.

(C) If the initial test results in a alcohol concentration of 0.04 or above, a confirmatory test is required. Such a test may be conducted on the same or a different EBT.

(D) If a confirmatory test is required, the BAT shall advise the individual not to eat, drink, put any object or substance in his or her mouth, or belch during a 15 to 20 minute waiting period before the administration of the confirmatory test, in order to avoid an artificially high alcohol reading. The test shall be conducted at the end of the 15- to 20-minute waiting period, regardless of whether the individual has followed the instructions above. If the individual fails to follow the instructions, the BAT shall note that on the testing form. A new mouthpiece shall be used for the confirmatory test. The results of the confirmatory test shall be considered the final result for purposes of any subsequent action, including discipline.

(E) The BAT shall ensure that the test result printout is affixed to the alcohol test form if the EBT does not print the results directly on the form, and sign and date the printed result, certifying that proper procedures were followed. The individual shall sign the printed result, certifying that he or she took the test with the appropriate sequential test result. If the individual declines to sign the printed result, it shall not be considered a refusal to be tested. However, the BAT shall note the individual's refusal to sign on the form.

(F) If the individual is unable to provide a sufficient breath sample due to a medical condition, such as asthma, the individual must provide medical documentation, as soon as possible, concerning the medical condition preventing the individual from providing an adequate breath sample. The contractor shall refer the individual and/or the medical documentation to the site occupational medical department for evaluation and confirmation of the condition. If the site occupational medical department determines that a medical condition is likely to have precluded the individual from providing an adequate breath sample, the test shall be declared invalid, and a written statement, with the basis for the conclusion, shall be provided to the contractor. If the site occupational medical department determines that a medical condition is not likely to have precluded the individual from providing an adequate breath sample, the individual's failure to provide an adequate sample will be treated as a refusal to take the test.

(G) The BAT shall transmit the test result to the contractor in a confidential manner. The information shall be maintained in a manner that ensures confidentiality. Information relating to a positive alcohol test may be provided by the BAT or the contractor to DOE upon request of DOE officials with a need for those records in the performance of their official responsibilities. Such information may also be provided by the BAT, the contractor, or DOE to the decisionmaker in any lawsuit, grievance, or other proceeding relating to the individual and arising from a positive alcohol test. The individual, upon request, may have access to any records relating to his or her test. If the individual has a positive test result, the contractor shall immediately remove that individual from the performance of health or safety-sensitive functions, and must notify DOE security officials if the individual holds, or is an applicant for, an access authorization.

§ 707.17 Action pursuant to a determination of misuse or abuse of alcohol.

(a) When an individual who performs a health or safety-sensitive function has tested positive for alcohol, the contractor shall immediately remove that employee from performing such a health or safety-sensitive function; if such employee also holds, or is an applicant for, an access authorization, then the contractor shall immediately notify DOE security officials for appropriate adjudication. If this is the first determination of alcohol misuse or abuse by that individual, the individual may be offered a reasonable opportunity for rehabilitation, consistent with the contractor's policies, and placed in a position that does not require the performance of a health or safety-sensitive function, provided that there is such an acceptable position in which the individual can be placed during rehabilitation. If there is no acceptable position available, the employee will be placed on sick, annual, or other leave status for a reasonable period sufficient to permit rehabilitation. However, the employee will not be protected from disciplinary action which may result from violations of work rules other than a positive test result. Following a determination by the contractor, in consultation with the site occupational medical department, that the individual can safely return to duty, the contractor may offer the individual reinstatement in the same or a comparable position to the one held prior to the removal, consistent with the requirements of 10 CFR part 710. Failure to take the opportunity for rehabilitation, if it has been made available, for the alcohol misuse or abuse will require appropriate disciplinary action up to and including removal from employment, in accordance with the contractor's policies. Any employee who is twice determined to have misused or abused alcohol shall in all cases be removed from employment under the DOE contract.

(b) An individual who has been removed from performing a health or safety-sensitive function because of the misuse or abuse of alcohol my not be returned to such position until that employee has:

(1) Successfully completed counseling or a program of rehabilitation;

(2) Undergone a breath test with a negative result; and

(3) Been evaluated by the site occupational medical department, and has been determined to be capable of safely returning to duty.

(c)(1) An individual who is not an employee of a contractor who has been denied unescorted access because of the misuse or abuse of alcohol may not have the unescorted access reinstated until that individual has:

(i) Provided evidence of successful completion of counseling or a program of rehabilitation;

(ii) Undergone a breath test with a negative result; and

(iii) Been evaluated by the site occupational medical department, and has been determined to be capable of being permitted unescorted access to a reactor control area.

(2) If, after restoration of unescorted access, such an individual is determined to have misused or abused alcohol for a second time, unescorted access shall be denied for a period of not less than three (3) years. Such an individual thereafter shall be granted unescorted access only upon a determination by DOE that a grant of unescorted access to the individual presents no unacceptable safety or security risk.

(d) If a DOE access authorization is involved, DOE must be notified of a contractor's intent to return an employee to performance of a health or safety-sensitive function, when such employee has been removed from the performance of such a function because of the misuse or abuse of alcohol. For an individual encumbering a position identified in § 707.8(b) (1) and (2), the individual may not return to work without prior DOE approval.

14. Redesignated § 707.19 is amended by adding the phrase "misuse or abuse of alcohol and" before the words "illegal drug use" in the first sentence of paragraph (b); by redesignating paragraph (c) as (c)(1) and adding a new paragraph (c)(2); by adding the phrase "and alcohol testing forms" after "custody forms" in paragraph (d); by adding the phrase "For illegal drugs," at the beginning of paragraph (e); and by adding paragraph (f). Paragraphs (c)(2) and (f) are set forth below:

§ 707.19 Records

* * * * *

(c) * * *

(2) Unless otherwise approved by DOE, the contractors shall ensure that all records relating to positive alcohol breath test results, including initial and confirmatory test records, are retained in such a manner as to allow retrieval of all information pertaining to the breath tests for a minimum period of five years, or longer if so instructed by DOE.

* * * * *

(f) For alcohol tests, the alcohol testing form will contain the following information:

(1) Date of breath test;

(2) Tested person's name;

(3) Tested employee's social security number or other identification number unique to the individual;

(4) Test number;

(5) Type of test (random, occurrence, reasonable suspicion, or rehabilitation follow-up);

(6) Remarks regarding unusual behavior or conditions; and

(7) BAT's signature.

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Part VI

Department of Energy

48 CFR Parts 909, 923, and 970
Acquisition Regulation; Interim Final Rule

DEPARTMENT OF ENERGY

48 CFR Parts 909, 923, and 970

Acquisition Regulation

AGENCY: Department of Energy (DOE).

ACTION: Interim final rule.

SUMMARY: DOE today publishes an interim final rule, with amends the Department of Energy Acquisition Regulation (DEAR), to implement the requirements of 10 CFR part 707, Workplace Substance Abuse Programs at DOE Sites. This rule provides a mechanism to contractually impose the requirements of 10 CFR part 707 on affected contractors, and otherwise conforms the DEAR to 10 CFR part 707.

DATES: *Effective date:* The interim final rule is effective on August 21, 1992. This interim rule becomes final on September 21, 1992, unless DOE takes additional action in response to public comments and publishes a document in the Federal Register.

COMMENT DATE: Written comments on this interim final rule must be received by August 21, 1992.

ADDRESS: Comments should be addressed to: Edward Simpson, Office of Policy (PR–121), Office of Procurement, Assistance and Program Management, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Edward Simpson, Office of Policy (PR–121), Office of Procurement, Assistance and Program Management, U.S. Department of Energy, Washington, DC 20585, (202) 586–8246.

Mary Ann Masterson, Office of the Assistant General Counsel, for Procurement and Finance (GC–34), U.S. Department of Energy, Washington, DC 20585, (202) 586–1526.

SUPPLEMENTARY INFORMATION:

I. Background

In today's Federal Register, DOE is publishing a final rule establishing DOE's policies, criteria, and procedures regarding the development, implementation, and maintenance of a drug free workplace by contractors and subcontractors performing work at sites owned or controlled by DOE and operated under the authority of the Atomic Energy Act of 1954, as amended. Because this final rule (codified at 10 CFR part 707, Workplace Substance Abuse Programs at DOE Sites) applies to certain contracts, conforming coverage in the DEAR is needed to provide a mechanism to contractually impose the requirements of 10 CFR part 707 on affected contractors. The interim final rule published today accomplishes this purpose.

DOE has determined that the promulgation of the amendments on an interim final basis is necessary to achieve the objectives of DOE's workplace substance abuse policies for contractors, as established in 10 CFR part 707. The amendments set forth in the interim final rule are derivative of the requirements of 10 CFR part 707, and impose no new requirements concerning the policies, criteria, and procedures of 10 CFR part 707. The contractual requirements, which are consistent with the statutory mandates of the Drug Free Workplace Act of 1988 (Pub. L. 100–690), are modeled after similar coverage now found in Subpart 23.5 of the Federal Acquisition Regulation (FAR). The amendments to the DEAR needed to implement 10 CFR part 707 are described below.

Item I

Part 909 is amended to add a new section 909.104–1, which adds the failure of an offeror or bidder to certify and agree to provide the contracting officer with its workplace substance abuse program as a standard in determining the offeror's eligibility for award.

Item II

Part 923 of the DEAR is amended to add a new subpart 923.5, entitled Workplace Substance Abuse Programs. This new subpart implements the requirements of 10 CFR part 707, Workplace Substance Abuse Programs at DOE Sites, in the DEAR in non-management and operating contracts. It provides general requirements concerning the applicability of 10 CFR part 707 and prescribes the use of the solicitation provision (a pre-award certification) and the contract clause set forth in section 970.2305–4.

An important part of this new subpart provides that contracts specifically within the scope of, and subject to, 10 CFR part 707 will not be subject to the government-wide drug free workplace requirements of FAR 23.5. DOE, in an effort to develop a stand-alone workplace substance abuse regulation at 10 CFR part 707, incorporated all of the elements of a drug free workplace program required by the Drug Free Workplace Act of 1988 in 10 CFR part 707, and has used the FAR coverage as an example in developing workplace substance abuse coverage for the DEAR.

The certification and contract clause are described in Item IV, below.

Item III

Subpart 970.23, entitled Environmental, Conservation, and Occupational Safety Programs, is amended to add a new section 970.2305, Workplace Substance Abuse Programs—Management and Operating Contracts. This section expressly implements the requirements of 10 CFR part 707 in all management and operating (M&O) contracts awarded under the authority of the Atomic Energy Act of 1954, as amended. In addition, this section requires the use of the solicitation provision and contract clause prescribed at subsection 970.2305–4 in solicitations and contracts for the management and operation of DOE-owned or -controlled sites. Finally, subsection 970.2305–5, by relying substantially on existing FAR 23.506 coverage, sets out the actions that may be taken by the Government in the event the contractor fails to comply with its approved workplace substance abuse program.

Item IV

Subpart 970.52, Contract Clauses for Management and Operating Contracts, is amended to add a solicitation provision (a pre-award certification) and a contract clause for use in implementing the requirements of 10 CFR part 707 in covered management and operating contracts.

The pre-award certification, identified as 970.5204–57, Certification Regarding Workplace Substance Abuse Programs at DOE Sites, will require the offeror/bidder to agree to provide the contracting officer with its workplace substance abuse program within 30 days after notification of selection for award, or of award of the contract, whichever is earlier. Consistent with the Drug Free Workplace Act of 1988, failure of the offeror or bidder to certify will be treated as a matter of contractor responsibility and will render the offeror/bidder ineligible for award. The certification is modeled after the certification required of offerors/bidders under FAR Subpart 23.5. That certification is found at FAR 52.223–15.

DEAR 970.5204–58, Workplace Substance Abuse Programs at DOE Sites, requires the contractor to develop, implement, and maintain a workplace

substance abuse program that is consistent with the requirements of 10 CFR part 707. In addition, the clause sets out the contractual remedies that may be imposed on the contractor for failure to (1) comply with 10 CFR part 707; or (2) perform in a manner consistent with its approved program. Such remedies are consistent with remedies set forth in the Drug Free Workplace Act of 1988. The clause also addresses the responsibility of the DOE prime contractor with regard to reviewing, approving, and monitoring workplace programs of all of its subcontractors; provides that subcontracts not subject to 10 CFR part 707 will be subject to the requirements of subpart 23.5 of the FAR; establishes the flow-down requirements for the clause; and provides the requirements for notifying the contracting officer of subcontracts that may be subject to 10 CFR part 707.

II. Procedural Requirements

A. Review Under Executive Order 12291

This Executive order entitled "Federal Regulation" requires that regulations be reviewed by the Office of Management and Budget (OMB) prior to their promulgation. The Director, OMB, by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. This interim final rule falls into one of the types of regulations exempted by OMB. Accordingly, this rule was not submitted to OMB for review.

B. Review Under the Regulatory Flexibility Act

This interim final rule was reviewed under the Regulatory Flexibility Act of 1980, Public Law 96–354, which requires preparation of a regulatory flexibility analysis for any rule which is likely to have significant impact on a substantial number of small entities. DOE has concluded that there is no need to prepare a regulatory flexibility analysis because the rule will affect only DOE contractors whose places of performance are at Government-owned or -controlled sites operated under the authority of the Atomic Energy Act of 1954, as amended, and their subcontractors. Therefore, DOE certifies that this rule will not have a significant economic impact on a substantial number of small entities, and no regulatory flexibility analysis has been prepared.

C. Review Under the Paperwork Reduction Act

No new information or recordkeeping requirements are imposed by this interim final rule. Accordingly, no OMB clearance is required under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, *et seq.).*

D. Review Under the National Environmental Policy Act (NEPA)

DOE has concluded that promulgation of this rule would not represent a major Federal action having significant impact on the human environment under the NEPA of 1969 (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality regulations (40 CFR parts 1500–1508), and the DOE Guidelines (40 CFR 1021). Therefore, this interim final rule does not require an environmental impact statement or environmental assessment pursuant to NEPA.

E. Review Under Executive Order 12612

Executive Order 12612 requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on States, on the relationship between the National Government and the States, or in the distribution of power and responsibilities among the various levels of Government. If there are sufficient substantial direct effects, then the Executive order requires the preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action.

This interim final rule, in essence, is derivative of the regulations at 10 CFR part 707, and merely implements the requirements of 10 CFR part 707 in DOE's acquisition regulations. This interim final rule provides a mechanism by which DOE can contractually implement the requirements of 10 CFR part 707 on its contractors. Because the universe of contractors to which the requirements of 10 CFR part 707 apply does not now, and will not in the foreseeable future, include States, DOE has determined that this rule will not have substantial direct effect on the institutional interests or traditional functions of the States.

III. Public Comments

Interested persons are invited to participate by submitting data, views, or arguments with respect to the DEAR amendments set forth in this rule. Three copies of written comments should be submitted to the address indicated in the "**ADDRESS**" section of this notice. All written comments received by August 21, 1992 will be carefully assessed and fully considered prior to the effective date of these amendments to the DEAR as a final rule.

DOE has concluded that this interim final rule does not involve a substantial issue of fact or law, and that the interim final rule should not have a substantial impact on the Nation's economy or large numbers of individuals or businesses. Further, public hearings were conducted as part of the rulemaking process of 10 CFR part 707, Workplace Substance Abuse Programs at DOE Sites. Therefore, pursuant to Public Law 95–91, the DOE Organization Act, and the Administrative Procedure Act (5 U.S.C. 553), DOE does not plan to hold a hearing on this interim final rule.

List of Subjects in 48 CFR Parts 909, 923, and 970

Government Contracts, Government Procurement.

For the reasons set out in the preamble, parts 909, 923, and 970 of title 48 of the Code of Federal Regulations are proposed to be amended as set forth below.

Issued in Washington, DC on July 15, 1992.

Berton J. Roth,

Acting Director, Office of Procurement, Assistance and Program Management.

The regulations in 48 CFR parts 909, 923, and 970 are amended as set forth below:

1. The authority citations for parts 909 and 923 continue to read as follows:

Authority: 42 U.S.C. 7254; 40 U.S.C. 486(c).

2. The authority citation for part 970 continues to read as follows:

Authority: Sec. 161 of the Atomic Energy Act of 1954 (42 U.S.C. 2201), Section 644 of the Department of Energy Organization Act, Pub. L. 95–91 (42 U.S.C. 7254), sec. 201 of the Federal Civilian Employee and Contractor Travel Expenses Act of 1985 (41 U.S.C. 420) and sec. 1534 of the Department of Defense Authorization Act, 1986, Pub. L. 99–145 (42 U.S.C. 7256a), as amended.

PART 909—CONTRACTOR QUALIFICATIONS

3. Subpart 909.1 is amended to add a new paragraph (h) in § 909.104–1, General Standards, to read as follows:

909.104–1 General Standards.

* * * * *

(h) For solicitations for contract work subject to the provisions of 10 CFR part 707, Workplace Substance Abuse Programs at DOE Sites, the prospective contractor must certify and agree, in accordance with 970.5204–57, Certification Regarding Workplace Substance Abuse Programs at DOE Sites, to provide the contracting officer with its written workplace substance abuse program in order to be determined as responsible and, thus, eligible to receive the contract award.

PART 923—ENVIRONMENT, CONSERVATION, AND OCCUPATIONAL HEALTH

4. Part 923 is amended by adding a new Subpart 923.5, Workplace Substance Abuse Programs, consisting of sections 923.570 through 923.570–3, to read as follows:

Subpart 923.5—Workplace Substance Abuse Programs

Sec.

Subpart 923.5—Workplace Substance Abuse Programs

923.570 Workplace Substance Abuse Programs at DOE Sites.

(a) The Department of Energy (DOE), as part of its overall responsibilities to protect the environment, maintain public health and safety, and safeguard the national security, has established policies, criteria, and procedures for contractors to develop and implement programs that help maintain a workplace free from the use of illegal drugs.

(b) Regulations concerning DOE's contractor workplace substance abuse programs are promulgated at 10 CFR part 707, Workplace Substance Abuse Programs at DOE Sites.

923.570–1 Applicability.

(a) The policies, criteria, and procedure specified in 10 CFR part 707, Workplace Substance Abuse Programs at DOE Sites, apply to contracts for work performed at site owned or controlled by DOE and operated under the authority of the Atomic Energy Act of 1954, as amended, where such work:

(1) Has a value of $25,000 or more, and;

(2) Has been determined by DOE to involve:

(i) Access to or handling of classified information or special nuclear materials;

(ii) High risk of danger to life, the environment, public health and safety or national security; or

(iii) The Transportation of hazardous materials to or from a DOE site.

(b) Except as otherwise provided for in this subpart, contracts subject to the requirements of 10 CFR part 707 and this subpart shall not be subject to FAR 23.5, Drug Free Workplace.

923.570–2 Solicitation provision and contract clause.

(a) The contracting officer shall insert the provision at 970.5204–57, Certification Regarding Workplace Substance Abuse Programs at DOE Sites, in solicitations where the work to be performed by the contractor will occur on sites owned or controlled by DOE and operated under the authority of the Atomic Energy Act of 1954, as amended, as specified in 923.570–1, Applicability.

(b) The contracting officer shall insert the clause at 970.5204–58, Workplace Substance Abuse Programs at DOE Sites, in contracts where the work to be performed by the contractor will occur on sites owned or controlled by DOE and operated under the authority of the Atomic Energy Act of 1954, as amended, as specified in 923.570–1, Applicability.

923.570–3 Suspension of payments, termination of contract, and debarment and suspension actions.

(a) The contracting officer shall comply with the procedures of FAR 23.506 regarding the suspension of contract payments, the termination of the contract for default, and the debarment and suspension of a contractor relative to failure to comply with 970.5204–58, Workplace Substance Abuse Programs at DOE Sites.

(b) For purposes of 10 CFR part 707, the specific causes for suspension of contract payments, termination of the contract for default, and debarment and suspension of the contractor are:

(1) The contractor fails to either comply with the requirements of 10 CFR part 707 or perform in a manner consistent with its approved program;

(2) The contractor has failed to comply with its certification;

(3) Such a number of contractor employees having been convicted of violations of criminal drug statutes for violations occurring on the DOE-owned or -controlled site, as to indicate that the contractor has failed to make a good faith effort to provide a drug free workplace; or

(4) The offeror has submitted a false certification in response to the provision at 970.5204–57, Certification Regarding Workplace Substance Abuse Programs at DOE Sites.

PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS

5. Subpart 970.23, Environmental, Conservation, and Occupational Safety Programs, is amended to add new sections 970.2305 through 970.2305–5 to read as follows:

Sec.

970.2305 Workplace Substance Abuse Programs—Management and Operating Contracts.

970.2305–1 General.

(a) The Department of Energy (DOE), as part of its overall responsibilities to protect the environment, maintain public health and safety, and safeguard the national security, has established policies, criteria, and procedures for management and operating contractors to develop and implement programs that help maintain a workplace free from the use of illegal drugs.

(b) Regulations concerning DOE's management and operating contractor workplace substance abuse programs are promulgated at 10 CFR part 707, Workplace Substance Abuse Programs at DOE Sites.

970.2305–2 Applicability.

(a) All management and operating contracts awarded under the authority of the Atomic Energy Act of 1954, as amended, are required to implement the policies, criteria, and procedures of 10 CFR part 707, Workplace Substance Abuse Programs at DOE Sites.

(b) Except as otherwise provided for in this subpart, management and operating contracts subject to the requirements of 10 CFR part 707 and this subpart shall not be subject to FAR 23.5, Drug Free Workplace.

970.2305–3 Definitions.

Terms and words relating to DOE's Workplace Substance Abuse Programs, as used in this section, have the same meanings assigned to such terms and words in 10 CFR part 707.

970.2305–4 Solicitation provision and contract clause.

(a) The contracting officer shall insert the provision at 970.5204–57, Certification Regarding Workplace Substance Abuse Programs at DOE Sites, in solicitations for the management and operation of DOE-owned or -controlled sites operated under the authority of the Atomic Energy Act of 1954, as amended.

(b) the contracting officer shall insert the clause at 970.5204–58, Workplace Substance Abuse Programs at DOE

Sites, in contracts for the management and operation of DOE-owned or -controlled sites operated under the authority of the Atomic Energy Act of 1954, as amended.

970.2305-5 Suspension of payments, termination of contract, and debarment and suspension actions.

(a) The contracting officer shall comply with the procedures of FAR 23.506 regarding the suspension of contract payments, the termination of the contract for default, and the debarment and suspension of a contractor relative to failure to comply with 970.5204-58, Workplace Substance Abuse Programs at DOE Sites.

(b) For purposes of 10 CFR part 707, the specific causes for suspension of contract payments, termination of the contract for default, and debarment and suspension of the contractor are:

(1) The contractor fails to either comply with the requirements of 10 CFR part 707 or perform in a manner consistent with its approved program;

(2) The contractor has failed to comply with its certification;

(3) Such a number of contractor employees having been convicted of violations of criminal drug statutes for violations occurring on the DOE-owned or -controlled site, as to indicate that the contractor has failed to make a good faith effort to provide a drug free workplace; or,

(4) The offeror has submitted a false certification in response to the provision at 970.5204-57, Certification Regarding Workplace Substance Abuse Programs at DOE Sites.

6. Subpart 970.52, Contract Clauses for Management and Operating Contracts, is hereby amended by adding a new Section 970.5204-57, Certification Regarding Workplace Substance Abuse Programs at DOE Sites, and a new Section 970.5204-58, Workplace Substance Abuse Programs at DOE Sites, to read as follows:

970.5204-57 Certification Regarding Workplace Substance Abuse Programs at DOE Facilities.

As prescribed in 970.2305-4(a), insert the following provision:

Certification Regarding Workplace Substance Abuse Programs at DOE Sites (Aug 1992)

(a) Any contract awarded as a result of this solicitation will be subject to the policies, criteria, and procedures of 10 CFR part 707, Workplace Substance Abuse Programs at DOE Sites.

(b) The offeror/bidder certifies and agrees that it will provide to the contracting officer, within 30 days after notification of selection for award, or award of a contract, whichever occurs first, pursuant to this solicitation, its written workplace substance abuse program consistent with the requirements of 10 CFR part 707.

(c) Failure of the offeror/bidder to certify in accordance with paragraph (b) of this provision, renders the offeror unqualified and ineligible for award.

(d) In addition to other remedies available to the Government, this certification concerns a matter within the jurisdiction of an agency of the United States, and the making of false, fictitious, or fraudulent statements may render the maker subject to prosecution under Title 18, U.S.C., section 1001.

Signature of officer/employee certifying regarding the offeror's workplace substance abuse program/Date

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Typed name and title of signatory

(End of provision)

970.5204-58 Workplace Substance Abuse Programs at DOE Sites.

As prescribed in 970.5204-4(b), insert the following clause:

Workplace Substance Abuse Programs at DOE Sites (Aug 1992)

(a) *Program Implementation.* The contractor shall, consistent with 10 CFR part 707, Workplace Substance Abuse Programs at DOE Sites, incorporated herein by reference with full force and effect, develop, implement, and maintain a workplace substance abuse program.

(b) *Remedies.* In addition to any other remedies available to the Government, the contractor's failure to comply with the requirements of 10 CFR part 707 or to perform in a manner consistent with its approved program may render the contractor subject to: the suspension of contract payments, or, where applicable, a reduction in award fee; termination for default; and suspension or debarment.

(c) *Subcontracts.* (1) The contractor agrees to notify the contracting officer reasonably in advance of, but not later than 30 days prior to, the award of any subcontract the contractor believes may be subject to the requirements of 10 CFR part 707.

(2) The DOE prime contractor shall require all subcontracts subject to the provisions of 10 CFR part 707 to agree to develop and implement a workplace substance abuse program that complies with the requirements of 10 CFR part 707, Workplace Substance Abuse Programs at DOE Sites, as a condition for award of the subcontract. The DOE prime contractor shall review and approve each subcontractor's program, and shall periodically monitor each subcontractor's implementation of the program for effectiveness and compliance with 10 CFR part 707.

(3) The contractor agrees to include, and require the inclusion of, the requirements of this clause in all subcontracts, at any tier, that are subject to the provisions of 10 CFR part 707.

(End of clause)

[FR Doc. 92-17076 Filed 7-21-92; 8:45 am]

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Wednesday
July 22, 1992

Part VII

Department of Transportation

Federal Aviation Administration

14 CFR Part 61

Amendment of the Annual and Biennial Flight Review Requirements; Notice of Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 61

[Docket No. 26927; Notice No. 92-8]

RIN 2120-AE11

Amendment of the Annual and Biennial Flight Review Requirements

AGENCY: Federal Aviation Administration (FAA).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: In this notice, the FAA proposes to delete the requirement that recreational pilots and noninstrument-rated private pilots with fewer than 400 hours of flight time (hereafter, the "affected pilots") receive 1 hour of ground and 1 hour of flight instrumentation annually. This action responds to petitions for rulemaking from the Aircraft Owners and Pilots Association (AOPA) and the Experimental Aircraft Association (EAA). In this notice the FAA also proposes to require that the biennial flight review (BFR) for all pilots consists of a minimum of 1 hour of ground instruction and 1 hour of flight instruction. This action is needed to establish a minimum standard 2-hour requirement for the BFR for all pilots. The intended effect is to eliminate inadequate flight reviews while not unduly restricting the flight instructor from requiring additional instruction. In a minor conforming change, the proposal retains in the BFR alternative means of compliance for glider pilots, which currently is contained in the annual flight review requirement.

DATES: Comments must be submitted on or before September 21, 1992.

ADDRESSES: Comments on this notice should be mailed, in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC-10), Docket No. 26927, 800 Independence Avenue SW., Washington, DC 20591. Comments delivered must be marked Docket No. 26927. Comments may be examined in room 915G weekdays between 8:30 a.m. and 5 p.m. except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Thomas Glista, Regulations Branch (AFS-850), General Aviation and Commercial Division, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-8150.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the proposals in this notice are also invited. Substantive comments should be supported by adequate documentation and accompanied by cost estimates when appropriate. Comments should identify the regulatory docket or notice number and should be submitted in triplicate to the Rules Docket address specified above. All comments received on or before the closing date for comments specified will be considered by the Administrator before taking action on this proposed rulemaking. The proposal contained in this notice may be changed in light of comments received. All comments received will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a preaddressed, stamped postcard on which the following statement is made: "Comments to Docket No. 26927." The postcard will be date stamped and mailed to the commenter.

Availability of NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-430, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM.

Persons interested in being placed on the mailing list for future NPRM's should request from the above office a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

The requirement for an annual flight review for the affected pilots originated, in part, from a petition for rulemaking submitted by the National Association of Flight Instructors (NAFI) (47 FR 11026; March 15, 1982). The Federal Aviation Administration (FAA) proposed the requirement in Notice of Proposed Rulemaking (NPRM) No. 85-13 (50 FR 26286; June 25, 1985).

In a comment to the NPRM dated October 24, 1985, the Aircraft Owners and Pilots Association (AOPA) objected to the NPRM because the FAA proposed to attach additional training requirements for already certificated pilots to NAFI's proposal for an additional pilot certificate. AOPA disputed the justification for the FAA's proposal for the annual flight review, and provided data to indicate that there was no significant difference in the accident profile of the affected pilots as compared to the profile for all pilots. However, the FAA evaluated the data in a different manner which supported the annual requirement.

The annual flight review requirement was issued in a final rule titled "Certification of Recreational Pilots and Annual Flight Review Requirements for Recreational Pilots and Non-Instrument-Rated Private Pilots with Fewer than 400 Flight Hours" [54 FR 13028; March 29, 1989]. This rule amended part 61 of the Federal Aviation Regulations (FAR), 14 CFR part 61.

By letter dated May 22, 1989, AOPA petitioned the FAA to revise FAR § 61.56(d) by deleting the annual flight review requirement. AOPA urged reconsideration of the annual flight review requirement and provided additional accident data for review.

By letter dated July 25, 1989, the Experimental Aircraft Association (EAA) also petitioned the FAA to delete the annual flight review requirement for the affected pilots.

On July 30, 1989, Secretary of Transportation Samuel Skinner spoke at EAA's annual convention in Oshkosh, Wisconsin. In response to requests from the aviation community, he promised that the FAA would review the data that was the basis and justification for requiring the annual flight review.

In further consideration of the data presented in the AOPA petition, representatives of AOPA and EAA met with FAA representatives on July 13, 1990. A record of that meeting is in Docket No. 24695. In that meeting, AOPA representatives stated that the safety data do not support singling out one particular segment of pilots for an annual flight review. EAA representatives noted the continuing decline in general aviation and commented that the general aviation public feels unduly burdened by additional rules. AOPA and EAA agreed that the current BFR requirement is vague and that standards for completion of the review vary considerably

between different instructors. In lieu of the annual flight review, AOPA and EAA expressed support for a minimum hour requirement for the BFR.

As a result of the petitions from AOPA and EAA, and further discussion of their safety data, the FAA determined that the annual flight review deserved further consideration. In order to reevaluate the rule without penalizing one group of pilots, the FAA extended the compliance date for the annual flight review until August 31, 1991, in Amendment No. 61–89 (55 FR 50312; December 5, 1990).

In addition, the FAA has received comments on the BFR from persons participating in the public hearings held in conjunction with the FAR parts 61, 141, and 143 Review. Individuals commented that the current BFR requirement is vague and ineffective. There were numerous requests at these hearings to standardize the review and for the FAA to provide additional guidance on the conduct of the BFR. Some commenters stated that the FAA should publish guidelines but not in the form of additional regulations. Other commenters stated that a minimum requirement for ground and flight instruction should be incorporated into the rule.

FAA Analysis of the Annual Flight Review

In March 1990, the FAA completed a preliminary reevaluation of the data that was the basis for adopting the annual flight review requirement for the affected pilots (§ 61.56(d)). This data showed the private pilot accident totals from 1976 to 1981; it was organized into fatal and nonfatal accidents, and by pilot age and total flight hours. Accident totals were provided for the various experience levels in 100-hour increments (through 999 hours).

Because the total number of accidents was higher in each of the first four 100-hour increments than in any of the other increments, the 400-hour pilot time level was selected as the time level for the annual flight review requirement. However, the FAA determined on reevaluation that the data did not indicate whether the higher accident totals for these subgroups reflected higher accident rates per pilot, or greater activity levels (i.e., exposure), or a combination of these factors.

Also, the accident data did not distinguish between instrument-rated and noninstrument-rated pilots. Thus, it was impossible to determine the extent to which relatively inexperienced instrument-rated pilots may have contributed to the accident totals.

Based on its reevaluation, the FAA concluded that the data used in the development of the annual flight review rule was insufficient to justify imposing this requirement on the affected pilots. Therefore the FAA proposes to delete it in this notice.

As mentioned above, the FAA currently is conducting a review of parts 61, 141, and 143. In connection with this review, the FAA is completing a thorough assessment of the skills that are needed for the different types of pilot certificates, ratings, and operations.

The FAA's Office of Safety Analysis has initiated three interrelated studies on general aviation safety.

The first study addresses requirements for general aviation exposure (activity) data. When combined with accident data, reliable exposure data will help the FAA develop rates of specific types of accidents and identify relative risks.

Another study concerns developing measures of pilot proficiency; the purpose of this project is to examine the relationships between accident rates and measures such as pilot recent and total flight time, age, certificate level, and ratings to determine the impact of these factors on safety performance.

The last study involves a detailed analysis of accident causes to help evaluate the need for remedial actions in various types of flying activity.

Preliminary work on all three studies was accomplished during FY91.

FAA Analysis of Biennial Flight Review Requirements

Currently, the flight review requirements of § 61.56 are very general. Section 61.56(a) requires a review of the current general operating and flight rules of part 91 of the FAR and a review of those maneuvers and procedures which, at the discretion of the person giving the review, are necessary for the pilot to demonstrate the safe exercise of the privileges of the pilot certificate. This requirement could be interpreted in many different ways. At one extreme, a flight review could consist of a short discussion during preflight and a 10-minute flight with one takeoff and one landing. At the other extreme, a flight review could consist of a multihour oral and flight review of all of the maneuvers and procedures listed in the practical test standards for each certificate and rating the applicant holds.

To assist the general aviation public in maintaining proficiency, the FAA created the "Pilot Proficiency Award Program" (Wings) to provide pilots with the opportunity to establish and participate in a personal recurrent training program. This voluntary program has been very successful in reducing the number of accidents for participating pilots. The Report of the Safety Review Task Force of the Federal Aviation Administration Flight Safety Program, August 1985, stated that the Wings program has an outstanding record. Only 81 accidents, with a total of 10 fatalities, have occurred among the group of 45,000 airmen who have participated in the program since 1979. In addition, statistics show that participation in the Wings program has increased 42 percent between 1986 and 1988. This trend indicates that the general aviation public recognizes the need for recurrent training. Amendment 61–490 (56 FR 11308; March 15, 1991) amended § 61.56 to state that persons who have satisfactorily completed one or more phases of an FAA-sponsored pilot proficiency award program need not accomplish the flight review.

In spite of this recognition of the need for recurrent training by the majority of general aviation pilots, the FAA has determined that there is a segment of the pilot population which may not receive a satisfactory flight review. Therefore, a minimum of 1 hour of ground instruction and 1 hour of flight instruction should be required biennially to ensure that each person receiving a BFR receives a satisfactory review commensurate to the certificates and ratings held.

Requiring a minimum of 1 hour of flight instruction and 1 hour of ground instruction will help to eliminate inadequate flight reviews while not restricting the flight instructor from requiring additional instruction if, in his or her opinion, it is needed to ensure that the pilot is capable of exercising the privileges of the certificates and ratings held.

The FAA assumes that 1 hour of flight instruction and 1 hour of ground instruction is the average duration of a flight review for pilots who have recently and consistently been exercising the privilege of their certificates and ratings. This is consistent with the recommendations of Advisory Circular AC–61–98A, described below. The FAA realizes that there are occasions when a flight review will require more than 1 hour each of ground and flight instruction. For example, if the pilot being reviewed has not exercised the privileges of the certificate for an extended period (i.e., more than 2 years), it is very likely that the flight instructor would require the pilot to receive more than 1 hour each of ground and flight instruction. Thus, this minimum requirement of 1 hour each of

ground and flight instruction does not restrict the flight instructor from requiring additional instruction, as needed, depending on the experience and skills of the pilot.

In addition, in response to comments that the FAA should publish guidelines concerning maneuvers and procedures, the FAA has developed Advisory Circular AC-61-98A, Currency and Additional Qualification Requirements for Certified Pilots. The purpose of AC-61-98A, in part, is to provide information for certified pilots and flight instructors to use in complying with the flight review required by § 61.56. The Advisory Circular recommends that all flight reviews consist of a minimum of 1 hour of flight instruction and 1 hour of ground instruction for all pilots. The FAA has determined, however, that setting specific maneuvers and procedures requirements in the rules would unduly restrict a flight instructor's discretion in reviewing an individual's ability to safely exercise the privileges of the certificates and ratings held. Due to different pilot abilities, experience levels, type of operation, certificates, ratings, and aircraft, the flight review needs to be tailored to the individual pilot. Thus, guidance in the form of an AC will supplement this proposed rule and will continue to provide a useful reference source in putting together a BFR appropriate for the person receiving the review. The goals and objectives of the BFR still must be met in that the flight instructor must be able to determine whether the individual being reviewed can safely exercise the privileges of the certificates and ratings held.

Other, Conforming Changes

On October 5, 1989, the FAA issued an amendment to the recreational pilot rule [Amendment No. 61-86; 54 FR 41234]. This amendment, in part, modified the annual flight review requirements for certain glider-rated private pilots. The amendment allowed glider-rated private pilots to substitute three instructional flights in a glider, each of which included a 360-degree turn, in lieu of the 1 hour of flight instruction. That change resulted, in part, from comments submitted by the Soaring Society of America on the requirements for an annual review contained in the recreational pilot rule.

The FAA has determined that the proposed change to the BFR should provide glider-rated pilots the same option for complying with the 1 hour each of ground and flight instruction as provided in Amendment No. 61-86 for glider-rated private pilots receiving the annual flight review. In order to incorporate this alternative means of compliance for glider pilots into the proposed change to the BFR, the amendatory language that allows this alternative means of compliance is retained in § 61.56(b).

Economic Evaluation

Executive Order 12291, dated February 17, 1981, directs Federal agencies to promulgate new regulations or modify existing regulations only if benefits to society for each regulatory change outweigh potential costs. Accordingly, the FAA has prepared a detailed preliminary economic evaluation of this proposal and placed it in the docket. The evaluation identifies and analyzes both the quantifiable and nonquantifiable economic effects of the proposal. Based on the results of its investigation, the FAA has concluded that this proposal is cost-beneficial.

This section contains a summary of the benefits and costs analyzed in the preliminary regulatory evaluation. In addition, it includes an initial regulatory flexibility determination required by the 1980 Regulatory Flexibility Act and an international trade impact assessment. If more detailed economic information is desired than is contained in this summary, the reader is referred to the full preliminary regulatory evaluation contained in the docket.

A pilot who has not satisfactorily completed an FAA-sponsored pilot proficiency award program, or a pilot proficiency check for a certificate, rating, or operating privilege within the past 2 years currently is required to receive a BFR. There may be cases where a BFR consists of an inadequate review that takes only a few minutes and other cases where a BFR consists of a multihour review. The FAA assumes, however, that most flight instructors are following the recommendations of AC 61-98A and are conducting BFRs that consist of 1 hour of ground instruction and 1 hour of flight instruction.

Since this proposal would merely codify in the rule what already is outlined in the AC and is generally accepted as standard practice, the FAA has concluded it has minimal associated costs.

The estimated benefits of the proposed rule are the cost savings from the elimination of the annual flight review requirement for the affected pilots. The FAA estimates that in 1992, approximately 129,600 pilots would be affected by the elimination of this requirement at a cost savings of $6.4 million in 1992. These estimated cost savings were calculated using representative rental rates for flight instruction and ground instruction by category of aircraft. Based on the estimate of the affected number of pilots from 1992 to 2001, the total estimated cost savings would be $65 million, or $44 million discounted at 10 percent over the period. The cost associated with this rule, resulting from requiring additional time in flight or ground instruction for some pilots as part of the BFR, are believed to be minimal since most pilots already meet the standards contained in the AC. In addition, because the data used in the development of the annual flight review were insufficient to justify imposing this requirement on the affected pilots, the FAA proposes to delete it in this notice. Therefore, the FAA has concluded that the proposed rule is cost-beneficial.

International Trade Impact Analysis

This proposed rule would have a negligible impact on trade opportunities for U.S. firms doing business overseas or on foreign firms doing business in the U.S. The proposed rule primarily affects recreational pilots and noninstrument-rated private pilots with fewer than 400 hours of flight time, not businesses involved in the sale of aviation products or services.

Regulatory Flexibility Determination

The proposed rule would not have a significant economic impact, positive or negative, on small entities. Pilots, rather than business entities, would be affected by this proposed rule. Where a noninstrument-rated private pilot with fewer than 400 hours is also the sole proprietor of a small business, and exercises the privileges of his or her certificate in operations that are incidental to that business, the proposed rule would have a negligible impact. The FAA estimates that these pilots would save between $98 and $185 every other year, depending on the aircraft they used for their annual reviews.

Federalism Impact

The proposals contained herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this amendment does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

Conclusion

This notice proposes to amend § 61.56 of the FAR by deleting the annual flight review requirement for the affected

pilots that was established in the "Certification of Recreational Pilots and Annual Flight Review Requirements for Recreational Pilots and Noninstrument-Rated Private Pilots with Fewer than 400 Flight Hours" final rule.

For the reasons discussed in the preamble, and based on the findings in the initial Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA has determined that this final rule is not major under Executive Order 12291. In addition, the FAA certifies that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This rule is considered significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A draft regulatory evaluation of this rule, including an initial Regulatory Flexibility Determination and International Trade Impact Analysis, has been placed in the docket. A copy may be obtained by contacting the person identified under "**FOR FURTHER INFORMATION CONTACT**."

List of Subjects in 14 CFR Part 61

Aeronautical knowledge, Aviation safety, Cross-country flight privileges, Eligibility requirements, Limitations, Operational experience, Student pilots.

The Proposed Amendment

Accordingly, part 61 of the Federal Aviation Regulations (14 CFR part 61) is proposed to be amended as follows:

PART 61—CERTIFICATION: PILOTS AND FLIGHT INSTRUCTORS

1. The authority citation for part 61 is revised to read as follows:

Authority: 49 U.S.C. Appendix 1354(a), 1355, 1421, 1422, and 1427; 49 U.S.C. 106(g).

2. Section 61.56 is revised to read as follows:

§ 61.56 Flight review.

(a) A flight review consists of a minimum of 1 hour of flight instruction and 1 hour of ground instruction. The review must include—

(1) A review of the current general operating and flight rules of Part 91 of this chapter; and

(2) A review of those maneuvers and procedures which, in the discretion of the person giving the review, are necessary for the pilot to demonstrate the safe exercise of the privileges of the pilot certificate.

(b) Glider pilots may substitute a minimum of three instructional flights in a glider, each of which includes a 360-degree turn, in lieu of the 1 hour of flight instruction required in paragraph (a) of this section.

(c) Except as provided in paragraphs (d) and (e) of this section, no person may act as pilot-in-command of an aircraft unless, since the beginning of the 24th calendar month before the month in which that pilot acts as pilot in command, that person has—

(1) Accomplished a flight review given in an aircraft for which that pilot is rated by an appropriately rated instructor certificated under this part or other person designated by the Administrator; and

(2) A logbook endorsed by the person who gave the review certifying that the person has satisfactorily completed the review.

(d) A person who has, within the period specified in paragraph (c) of this section, satisfactorily completed a pilot proficiency check conducted by the FAA, an approved pilot check airman, or a U.S. Armed Force, for a pilot certificate, rating, or operating privilege, need not accomplish the flight review required by this section.

(e) A person who has, within the period specified in paragraph (c) of this section, satisfactorily completed one or more phases of an FAA-sponsored pilot proficiency award program need not accomplish the flight review required by this section.

(f) The requirements of this section may be accomplished in combination with the requirements of § 61.57 and other applicable recency requirements at the discretion of the instructor.

Issued in Washington, DC, July 14, 1992

Thomas C. Accardi,

Director, Flight Standards Service.

[FR Doc. 92–17272 Filed 7–21–92; 8:45 am]

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LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

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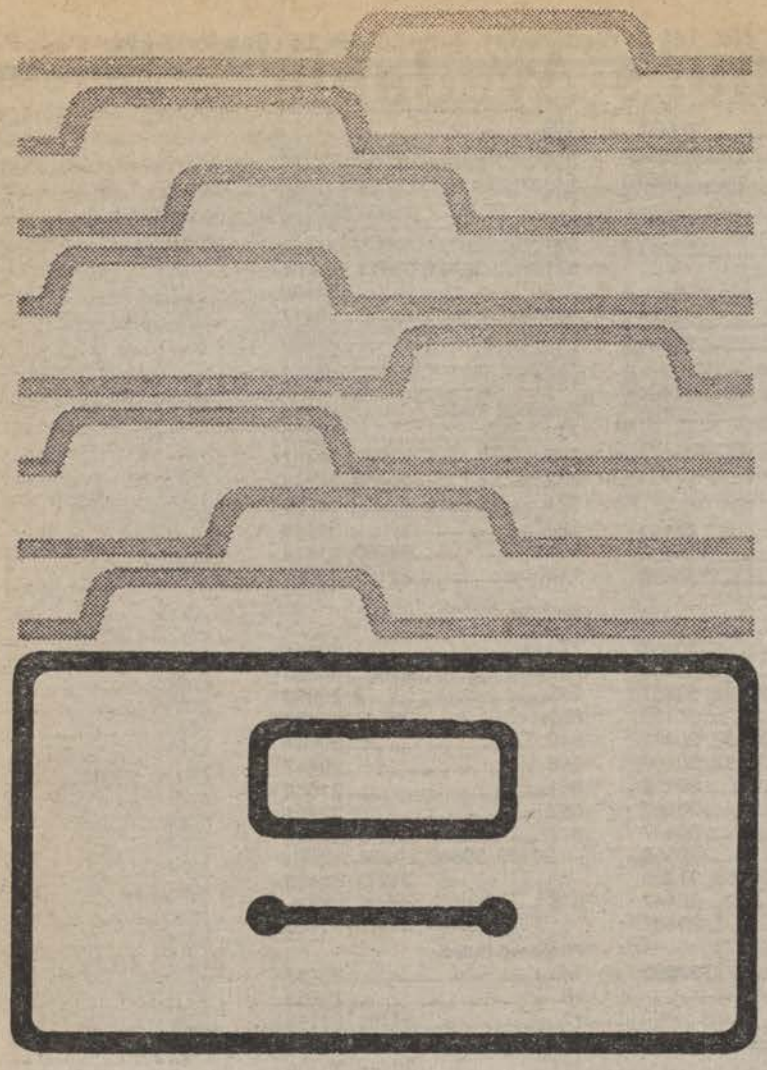

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in the Code of Federal Regulations (CFR)

GUIDE: Revised January 1, 1992

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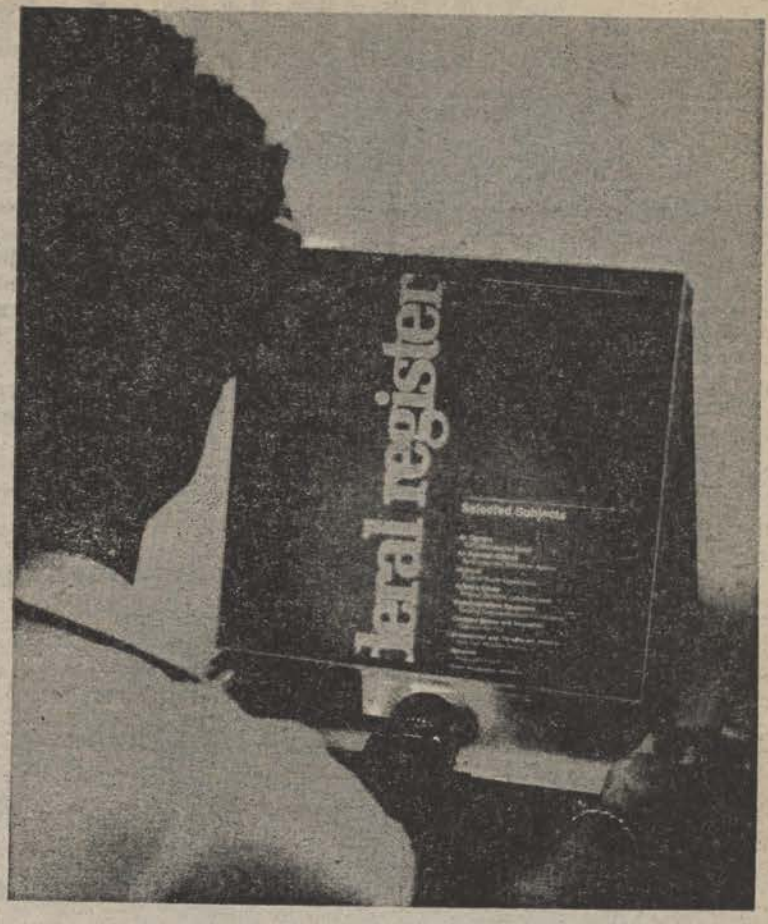

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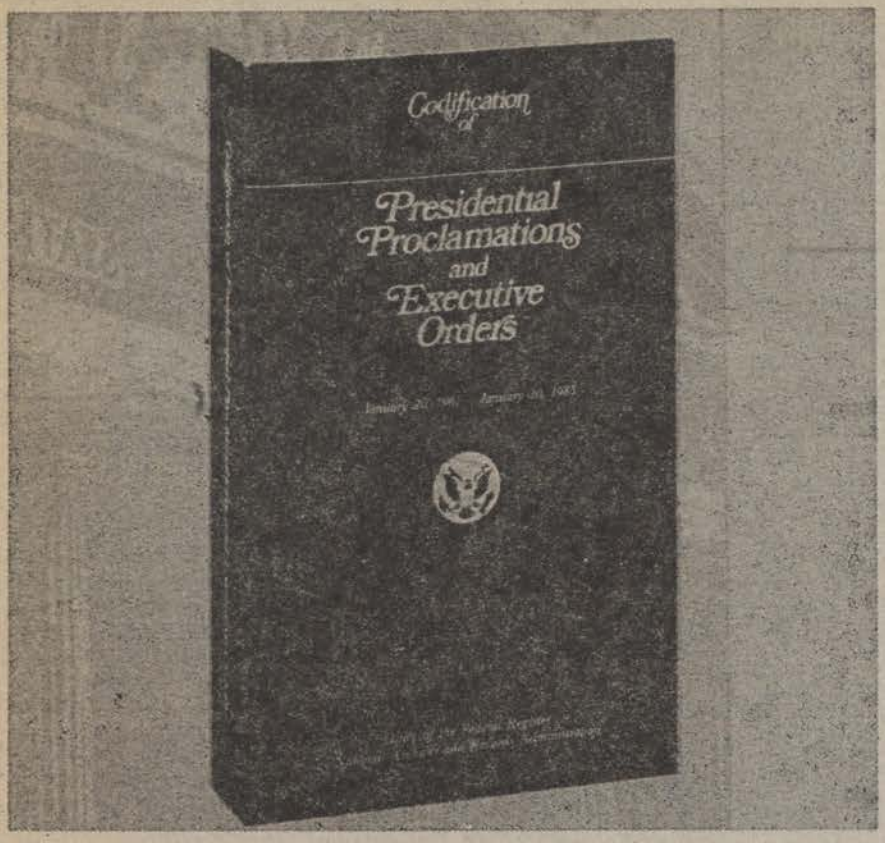

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